Judicial System" Printed
papers containing the Minutes
dt. 2nd Oct 1815
by Earl of Moira
(on the Judicial Administration
of the Presidency of Fort
William and Other papers)

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JUDICIAL DEPARTMENT.

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Our Governor General in Council

at

Fort William in Bengal.

PARA. 1. WE have already forwarded to you a copy of our letter, in this department, to the presidency of Fort St. George, of the 29th April last, in regard to a modification of the systems established within our possessions on that side of India, for the administration of justice, and the maintenance of the police. The existing systems of judicature and police under your presidency, being founded on the same principles, and regulated by the same rules, as those in force within the territories of Fort St. George, we feel ourselves, on the present occasion, relieved from the necessity of entering so much at length on many of the leading points connected with the subject of this address, as might otherwise have been requisite.

CIVIL JUSTICE.

2. The great objects which Lord CORNWALLIS had in view, in forming the Judicial Code of Bengal, consisted, not only in the desire of providing for an upright distribution of justice, but also in that of securing a promptitude and facility in the means of obtaining it, in a country, where, as it has been truly stated, by Lord TEIGNMOUTH, "short injustice is proverbially said to be preferable to protracted justice."

Minute, the 18th June, 1789.

3. Upon a reference to the state of arrears before the different judicial tribunals, on the 1st January 1807, it appears that the number of depending suits, as exhibited in the report of the Sudder Dewanny Adawlut, was 121,453, although the attention of the Government seems to have been particularly directed, for several years antecedently, with a view to effectuate a more speedy adjustment of civil causes; and that, on the 1st January, 1813, to which your latest returns received by us extend, notwithstanding all the additional expedients which you had, in the mean time, resorted to, for lessening their amount, the state of arrears, at that time, compared with that on the 1st January, 1807, shows an increase of no less than 20,953, and this, though every exertion of which they are capable appears to have been made, by those to whom the administration of justice is confided.

Regulation 16, 1803.
——— 49, ———
——— 15, 1805.
——— 1, 1807.
——— 13, 1808.
——— 13, 1810.
——— 16, 1810.
——— 17, 1811.

Arrears on 1st January 1813.—142,406.
Ditto on ditto 1807 - - - 121,453.
20,953.

4. We should, however, form but a very confined and imperfect idea of the insufficiency of the existing provisions for administering justice within the extensive and populous range of territory under your government, and of the public inconvenience thence resulting, were we to look no further than to the actual number of depending suits in the courts, and to the length of time the parties who have instituted them must have to wait for a decision. We are persuaded that those whose names stand on the files of the courts, and whose causes remain to be heard and decided, form but a very small number, compared with the individuals who, in every year, stand in need of judicial protection, but who are either unable or deterred from seeking it.

5. We would here particularly refer to those injuries to which the ryots are exposed, which come under the head of complaints for excess of collection, or undue exactions made by the zemindars and their under-tenants, and to the disputes respecting the right to land, boundaries of land, crops, and water-courses.

6. The repeated failure of the zemindars in satisfying the demands of government, and the extensive sales of their estates which took place in consequence, induced the government to pass a Regulation in 1799, allowing the zemindars, in all cases of alleged arrears due to them, to proceed immediately to the distraint of the defaulters' property, leaving the latter, if he felt himself aggrieved by the act of the zemindar, afterwards to seek for judicial redress. The power thus vested in the zemindars for enforcing their claims on the ry-

Regulation 7.

ots, had the effect of relieving them from those impediments to the realization of their collections, to which they were before subject, under the formal mode of process, by which they could alone recover their debts; but it left the cultivators at large very much at their mercy. This subject was particularly brought under your notice, by Sir HENRY STRACHEY, the judge and magistrate of Midnapore, and by Mr. ERNST, the collector of the same zillah, so long ago as the year 1802. Sir HENRY STRACHEY observes, that the effect of the Regulation of 1799 had been, "to enable the zemindars, by means of attachments and sales, to realise their rents; but "that the frequency of these attachments and sales in the Mofussil, would alone serve to prove "that the revenues were not collected without extreme misery to the ryots; and that a "consideration of the expense and delay of prosecution, satisfied him, that the Dewanny "Adawlut did not afford the sufferers effectual redress against the abuse of the powers entrusted "to the zemindars by the 7th Regulation of 1799."

Answers to queries circulated by Lord Wellesley.

7. By Mr. ERNST, it is stated, that it "bore hard enough upon the ryot to be put to the "trouble and expense of instituting a suit to try a demand very likely to be vexatious and un-"just;—that this trouble and expense were sufficient to deter most ryots from having recourse "to such a remedy;—and that the trouble, the delay, and the enormous expense of carrying "on suits in the Adawlut, were such that the people who gained a mere subsistence from their "labour, which was the case of nine-tenths of the ryots, were absolutely precluded from resort-"ing to it."

8. The judge and magistrate of Dinagepore (Mr. LEYCESTER,) in his report of the 24th July 1810, urged the expediency of "modifying the legal powers of distraint exercised by the "zemindar, on the ground that the ryot, when reduced to poverty by its exercise, could not "spare his time in the pursuit of justice; and stated "that a general system of rackrenting, "hard-heartedness, and exaction, through farmers, under-farmers, kutkunadars, and the whole "host of zemindary omlah, obtained in that district." And he adds,—"Even this rackrenting "is unfairly managed.—We have no regular leases executed between the zemindar and his "tenants; we do not find a mutual consent and unrestrained negotiation in their bargains;—"nothing like it. But instead of it, we hear of nothing but arbitrary demands, enforced by "stocks, duress of all sorts, and battery of their persons."

9. We have, also, before us the declaration of Mr. COLEBROOKE, in his minute recorded on your Proceedings of Council of the 30th June 1808, that "it was known to every judicial officer "in Bengal, that the provisions for preventing undue exactions from dependent talookdars, have "proved totally nugatory, though the courts of justice are open to them for redress."

10. We are informed by Mr. BLUNT, the superintendant of police in the Lower Provinces, in his report dated the 15th June 1811, that, in order to ascertain, in the provincial division of Moorshedabad, what description of complaints was most prevalent, he had exposed in his cutcherry tent a box, for the purpose of receiving petitions,—a practice which we find to have been enjoined by the orders of 1772,—and that of some hundreds which were thus preferred at Rungpore, *by far the greatest proportion related to matters of rent and undue exactions on the part of the zemindars.* He was induced from the number of petitions presented to him, to enquire into the state of the business pending before the Native commissioners and munsiffs appointed for the trial of civil suits, which, as he declares, he found "so heavily in arrear, or in such a state of irregularity, "as almost entirely to defeat the objects of the appointment of those officers." He adds, "a Ryot can entertain little hope of redress against the oppressions of a zemindar, or temporary "farmer, *where there are the number of two thousand civil suits pending for trial before the munsiff,* "to whom his plaint is to be preferred, and which," Mr. BLUNT was informed by one munsiff, "was the number depending before him for trial; and that ten causes were the average numbe "of his monthly decisions." He goes on to observe, that "the ryot therefore, seeing no prospect "of redress by the institution of a suit before the Munsiff, and not possessing the means of "defraying the expense of a suit before the judge, where also an equal delay often attends "the hearing and decision of such suits, has recourse to the criminal department, and by "means of a false and misrepresented charge, robbery or breach of the peace, to the truth of "which he makes oath, and becomes gradually insensible to the crime of perjury, hoping to "deceive the Court, and, if not to obtain restoration of his property, at least to have the gra-"tification, in his turn, of molesting his oppressor: and, failing in these objects, dispossessed "of his lands or of the means of their cultivation, he is finally driven to acts of theft or of "robbery, for his support." The superintendant then adverts to the necessity of having recourse to some more simple and expeditious method of settling suits respecting undue exactions, in the recovery of which, he states, the ryots had "the greatest difficulties to encounter; while, by "the power of distraint, &c., there was practically, scarcely any restraint on the avarice of the "landholder, or temporary farmer."

11. We think it necessary here to advert to a very aggravated abuse, stated by Mr. ERNST to have arisen out of the exercise of this power, and which, from the letter of Mr. BAYLEY the magistrate of Burdwan, to the register of the Nizamut Adawlut, dated the 23d January, 1811, and other communications of your judicial servants, appears to be of no rare or extraordinary occurrence. It is observed by Mr. ERNST that "the zemindars or farmers hire people to charge "their refractory tenants with having been concerned in robberies, and suborn evidence for the "purpose of convicting them; that some instances of this happened both in Jessore and Kishe-"nuggur; that in the latter district, in particular, respectable tenants, men of character, "education and property, were apprehended as decoits, committed for trial, and had lingered "many months, several of them a whole year, in confinement, before they were tried and acquit-"ted by the court of circuit; that they were torn from the bosom of their families, which "depended upon them for support and protection: they lost their rank in society; they were "confounded, within the walls of a jail, with common felons: and during their confinement, they

Report for 1st session of 1804, in division of Calcutta.

" they were dispossessed of their jotes; and all the personal property which they had left at " their houses, was sold, for the satisfaction of the arbitrary and unjust demands of rent."

12. We also find it expressly stated by the Sudder Dewanny Adawlut, in their report of the 17th October 1809, that the very small proportion which suits for exaction bear to those of a different description, is to be ascribed to the power of distraint possessed by the zemindars.

13. What we have here quoted, (and much more might have been quoted from your records equally strong and conclusive,) relates to the very feeble protection which the present provisions of the Judicial Code have afforded, or can, in the nature of things, afford to the ryots, against the injustice and extortions of the zemindars.

14. We shall next speak of the inefficacy of the system in regard to the settlement of disputes respecting land, boundaries of land, crops, and water-courses. Disputes of this nature have ever, and must ever be more or less prevalent in an Indian country, and particularly so where the state of landed tenures, both as to the division among the partners and heirs, and the rights of the talookdars, mocuddims, and ryots, is, in a great measure, undefined, as appears to be still the case, as well in the provinces where the permanent settlement has been introduced, as in the other portions of territory under your government. Such disputes have much increased since the establishment of the present plan for the administration of justice, and the circumstances which attend them are as hurtful to the moral habits and feelings of the inhabitants, as they are destructive of the internal quiet of the provinces, more especially where the landed property has become the most divided, in which the disputes assume a more determined and formidable character.

Letters of Mr. Welland, acting judge of court for the division of Dacca, of the 7th May, 22d, and 25th July, 1811.

15. On the first introduction of the judicial system in 1793, a Regulation (49) was expressly framed, for preventing affrays respecting disputed boundaries and crops.

16. This Regulation contemplated a speedy adjudication of the complaints of the parties, by the zillah judge. It is described, in Section 6, as affording " ready means of redress to all " persons who may be forcibly dispossessed of lands and crops."

17. The case when brought before the court in the first instance, with the view to a summary proceeding, is required to be *immediately* taken cognizance of; and the preamble to the Regulation declares that " the having recourse to violent means, either of enforcing or resisting such " claims, was not only highly criminal, but unnecessary, from the parties having it, *at all times*, " *in their power to obtain redress, by application to the Courts of Judicature.*"

18. Instead, however, of an immediate or prompt decision by the courts, on cases of this sort, the statements exhibited on your record show that the delay of justice practically operates as a denial of it; the consequence of which has been, that the affrays and all their attendant evils and outrages, which the Regulation was meant to prevent, have become more prevalent than ever.

19. We have touched on this subject in our judicial dispatch of the 30th Sept. 1814, paragraphs 27 to 29, and have quoted the sentiments of several of your servants in confirmation of what we then advanced, respecting the great cause of these irregularities, namely, the want of adequate protection to the property of individuals, and the necessity under which, in such a state of things, they are placed, when it is attacked or taken from them by the hand of violence, of defending, or endeavoring to recover it, in the best manner they are able.

20. The documents which have accompanied your more recent dispatches, have recalled our attention to this subject.

21. It is observed by Mr. Bayley, the judge and magistrate of Burdwan, in his letter to the Nizamut Adawlut of the 23d January, 1811, that " the establishment of internal peace and " good order materially depended upon the speedy adjudication of the numerous pending suits af- " fecting the right of possession to disputed crops, boundaries, &c. that if not immediately in- " quired into in the civil court, they generally involved affrays attended with bloodshed; and " they furnished employment to gangs of decoits and other armed depredators, and encouraged " that spirit of violence and active contempt of the laws, which it appeared absolutely necessary " to subdue, before any thing like an efficient police could be established."

22. The same sentiments are enforced by other magistrates, who consider it impracticable to check, with any effect, the encreasing disposition among the people to resort to violence in the settlement of disputes of the abovementioned nature, unless they could command the means of speedy justice.

23. It is observed by Mr. C. Russell, the third judge of the provincial court of Benares, in his report on Juanpore of the 24th March, 1813, that an application to the court in a case of disputed possession of land, had been considered " almost nugatory, or as, at all events, " only affording a very distant prospect of decision:"—that " the arrear of the summary " suits was so heavy as to preclude the possibility of early redress:—and that this conviction " must necessarily operate as an incentive to that propensity so prevalent in the district, to ap- " peal to the sword upon every dispute connected with zemindary tenures."

24. By none, however, of our servants does this subject appear to have undergone a more particular consideration than by Mr. Guthrie, the superintendant of police in the Western Provinces, and Mr. Fortescue, the judge and magistrate of Allahabad, whose communications on this subject have already been noticed by us in paragraphs 27 to 29 of our dispatch in this department, dated 30th Sept. 1814.

25. The former of these officers states, that the tannahs annexed to Benares, Juanpore, and Mirzapore, " were become notorious for the frequency of affrays attended with murder, and for " resistance to the authority of the magistrate, and of the collectors, whose orders were almost " wholly disregarded;"—that, in the last six months of the year 1811, violent affrays had taken place, in which no less than about 5,708 persons were actually concerned, of whom 30 were killed on the spot, and 69 wounded;—and that these occurrences were exclusive of nu-

Report 20th May, 1812.

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merous affrays of a less serious nature.

26. An instance is also mentioned by Mr. Fortescue, in his report of the 20th August, 1812, in which near a thousand persons collected together, had fought for a few begahs of land, in which battle ten were killed on the spot, and a proportionate number wounded.

27. The daring manner in which these breaches of the peace are committed in open defiance of the police, may be judged of from two cases which are stated by Mr. Guthrie. In the first, intimation had been received by the darogah of Ghazepore of the design of the zemindars of Zemanah on the opposite side of the river, to take forcible possession of some crops. He went to the spot with a civil force, and soon afterwards a body of 400 persons appeared, armed and prepared for a contest. The darogah proclaimed aloud the penalties attached by Regulation 49 of 1793, for the offence which they were about to commit, and made the shew of a determination to disperse the rioters by force; but without effect. An affray took place in his presence, in which the zemindar of Khalispore, whose crop it was the object to seize, was killed on the spot, although he had taken refuge with the officers of the police. The other was a case which happened in the neighbourhood of Ghazepore also—Mr. Sweedland, the judge and magistrate, happening to pass through a large village, which appeared to be almost wholly deserted by its inhabitants, was informed that they had gone to settle a boundary dispute with the zemindars of another village. He went to the spot, where the dispute had been decided, and found the darogah there, who informed him that a violent affray had just occurred, which he had fruitlessly endeavoured to prevent, and in which it would appear that Mr. Sweedland saw 15 persons who had been killed, and was informed, that many others had been desperately maimed.

28. It is observed by Mr. Guthrie, with reference to the frequent prevalence of occurrences of this kind, that "the ready means of redress which the Regulation (referring to Regulation "49 of 1793) professed to afford to persons who might be forcibly dispossessed, was not found "in practice. That in Juanpore, for example, there were not less than 1606 summary suits "in cases of revenue and dispossession, *many of which had been pending for years;* and that "with respect to original suits for land, if carried through the courts of appeal, he did not "think that a final decree could be expected, in less than three or four years from the time it "was first preferred,—that under these circumstances it was out of the power of the executive "authorities to administer the relief promised to complainants, by Sections 2 and 6 of the Regu-"lation in question, and as the penalties prescribed for a breach of its rules were, he concluded, "consequent on the presumption of the efficiency of its provisions to grant the ready redress "promised by them, but not afforded, it was a matter of serious consideration whether it was "to be expected, that a zemindar in the actual possession of disputed land, of which he and "his brethren either were or considered themselves legal proprietors, and which they had "ploughed and sowed, would, when they had in their own hands the immediate means of defend-"ing it, pay that respect to the law, as voluntarily to resign the harvest of their labours to be "reaped by their enemies, and rest their claims for restitution, cost and damages, on the de-"cision of the court, which might be protracted for years."

29. The observations of Mr. Fortescue, in his very able and valuable report, are not less just and convincing as to the powerful inducements held out to unprincipled individuals for resorting to the same violent methods of seizing the property of their neighbours, under a dilatory and inefficient execution of the law.

30. "The enjoyment of the profits of the disputed lands during the inevitably long interval "of judicial decision, as well as of the vast preponderance of power to contest the suit with ef-"fect, which the point of possession is so well known to convey, is viewed with a most jealous "eye, especially when he who shall be excluded and driven to the tedious prosecution of his "claims in the courts, shall have to combat ultimately the disadvantages of the poverty of his "opponent, which precludes the probability of reimbursement of the profits, and the certain "intervention of a multiplicity of difficulties in the execution of the decree. These considera-"tions unfavourable to a suit in the court, contrasted with the obvious gain of immediate occu-"pancy, operate very powerfully on the minds of those, who have no conception of the common "principles of justice, who, particularly in the Western Provinces, have been accustomed to es-"teem the issue of force and violence as the criterion of right and wrong, who know neither "crime nor disgrace in boldly stepping forward to obtain that which, according to their "estimation, is the only species of valuable property."

31. "In this way does the inducement, which is generally *all clear profit*, prove too power-"ful, and the dispute which at first was confined to the assertion of an equal or independent "right, at length involves the whole neighbourhood, as their passions are heated, and the season "of cultivation or harvest approaches, in the utmost struggles of hostility. The matter is *now* "*brought forward in the Foujdary Court* by the reciprocal complaints of both parties."

32. The same ground of quarrel (says Mr. Fortescue) is probably revived over and over again, pending a suit in the Dewanny Adawlut, not ostensibly perhaps by identically the same individuals, but certainly instigated and supported by them, through the medium of their relations and dependants. "Each successive hearing is sure to bring increased difficulties, in proportion to the "wariness and circumspection adopted, and it not unfrequently happens that the very taking of "the former penalty bonds for keeping the peace, causes a ground for the breach of it, each party "being inveterately solicitous of devolving the forfeiture of the obligation on his adversary."

33. When the cause is introduced into the Dewanny Court, and the question of the rightful claim is to be tried on its own intrinsic merits, the labyrinth of difficulties which the judge has to encounter, must at all events be great, though it may relate to a point which, as Mr. Fortescue observes, "is frequently obvious and easy to a discriminating *mind on the spot*," or, as it is expressed by Mr. Guthrie, which "is in itself perfectly simple, and which the most sum-

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"mary inquiry if made by the judge *on the spot*, would enable him) at once to decide on in a "satisfactory manner."

34. Still less will the judge be relieved from the perplexities which surround him in causes of this sort (which are generally allowed to occupy more of his time than almost any others,) when years have elapsed from the institution to the trial of the suits; when the former landmarks have been effaced, when the land itself has altered its form and appearance, in consequence of annual inundations which may have either diminished, enlarged or wholly removed it, and when the very recollection of particular facts may, instead of being fresh in the mind of the witnesses, be weakened or decayed.

35. The difficulty of bringing home to the parties the commission of the offence is particularly stated by Sir EDWARD COLEBROOKE in his report as judge of the division of Patna, dated 21st April 1804, and by Mr. GUTHRIE; by the latter of whom, in his report already referred to of the 20th May 1812, it is declared as his belief, that scarcely one in three hundred concerned in affrays is convicted of the offence on trial, and that of the 5,700 individuals said to have been engaged in affrays in Juanpore, to which we have also alluded in a former part of this dispatch, twelve persons only were found guilty of the offence.

Criml. Consn. 20th June 1812. No. 67.
Criml. Consn. 20th June 1812. No. 67, Statement No. 3.

36. We have been thus particular in bringing under view the incompetency of the judicial system, as it is at present constituted to provide for the adjudication of complaints by ryots of "undue exactions" and of disputes respecting the right to land and crops, because they have an immediate reference to the particular interests and concerns of the people at large, and because this incompetency of the system has very sensibly served to extend and to create those very disorders in the body politic, which the system itself was designed to remedy.

37. We have in a former dispatch in this department, taken occasion to shew, that where the zemindary property is much divided, the ryots are much more disposed to resort to the laws in vindication of their rights and privileges, when they are either usurped or invaded, than under other circumstances.

38. The zemindary estates under your government have become much reduced in size, and in the same degree have increased in number since the year 1793, by the sales of land for balances, as well as by the operation of the Mohummedan and Hindoo law of succession, which by Regulation XI. of that year you have made to apply to such property, and to these causes we must indirectly attribute in some measure the increased pressure of business in your civil courts.

39. By Regulation VI. of 1807, you indeed restricted the partition of small estates of this description, by declaring that none should be allowed to be divided the jumma of which did not exceed 1000 Sicca Rupees, nor unless each portion proposed to be divided should yield a revenue to Government of 500 Rupees per annum. But this restriction you have, for very solid reasons, repealed by Regulation V. of 1810, which again admits of divisions and separations of zemindary property to any extent at the pleasure of the Co-sharers, while by Regulation IX. of 1811, which applies exclusively to the Ceded and Conquered Provinces, you have extended the same principle to the ryots, enjoying puttees of villages.

40. We have particularly noticed these circumstances, for unless some very considerable enlargement of the judicial system is effected beyond what appears hitherto to have been in your contemplation, the increasing demands for justice that will in consequence be experienced, will of itself at no distant day, arguing as we do from past experience, render it far more unequal to its professed purposes than it now is.

41. We have stated in our judicial dispatch to Fort St. George of the 29th April, why it is impossible for us on any reasonable ground of judgement to consider the suits as frivolous or vexatious, which have been abandoned in consequence of the imposition of law charges, or the disputes which parties are by the same means discouraged from putting into the shape of judicial investigation, and why we fully accord in the sentiment expressed by Lord CORNWALLIS in his minute of the 11th February 1793, that the amount of arrears in the Adawluts "is not to be ascribed to the litigiousness of the people, but with more truth to the dilatoriness and insufficiency of the administration of justice"; and in this sentiment we are fully confirmed by the fact, that although the expenses attendant upon legal proceedings, both in the European and Native tribunals, have, since the year 1795, been considerably augmented by an extension of fees, and the introduction of stamp duties, the arrears of causes are still so heavy as to have rendered the number of suits, actually settled by razeenamah before the Native commissioners who carry on and execute the business of justice, arising among the great body of the community, nearly equal, in some years, to the number really decided upon by those authorities: and in other years the razeenamahs have actually exceeded the regular decrees. The suits settled in this mode before the European tribunals, notwithstanding the heavy load of business before them, are much less in proportion. This may have proceeded from the suitors, in those courts, being better able than those who apply to the Native commissioners, to bear the inconvenience attendant upon a long protracted decision.

42. These facts and considerations shew that the actual and growing inadequacy of the existing administration of civil justice is neither to be remedied in the one case, nor prevented in the other, by any augmentation of the European part of the establishment, even if the embarrassed condition of our finances enabled us to incur an additional expenditure on that account. Double the number of zillah judges, we are persuaded, would do little more than palliate, and that most feebly, the evil, and by no means reach the seat of the disease. This can only be accomplished in any satisfactory degree by extending as far as may be necessary to meet the wants and necessities of the people, the instrumentality of the Natives, in conducting this branch of internal regulation.

43. In what mode, and to what extent the Natives can with the most effect and advantage be

be employed in the administration of civil justice, is the question which now presents itself to us, and we must declare our deliberate conviction, that no arrangement for this purpose can proceed on a right principle, nor operate satisfactorily in the fulfilment of its aims, which has not a reference to the ancient and long established customs, and institutions of the country, and which does not accommodate itself to the habits, the feelings, and the understanding of those for whose benefit it is designed.

44. It is with this sentiment, deeply fixed on our minds, that we conceive the fittest and most proper agency we can primarily make use of in the distribution of civil justice, consists of those who form the more permanent and natural authorities in the interior of the Provinces. The nature of these authorities and their subserviency to the great purposes and ends of efficient government, when properly directed and controuled, we have particularly explained in our judicial dispatch to Madras. That the same authorities exist, within the territories under your charge, we have very clear evidence, though they may be found in a more mutilated and deformed condition, than in other parts of our possessions, where the preservation and revival of them have been made an object of attention and of policy.

Mr. Shore's minute on the Decennial Settlement, and reports of Judges and Collectors.

45. The officers to whom we particularly allude are generally described in the Peninsula, by the name of potails. They are also thus distinguished in the British dominions under the Bombay Government, and they appear to have been designated by the same general term in the Bengal Provinces, in our more early connection with those Provinces, though now passing by the appellation of munduls, moccuddims or gomastahs. It is by these officers, in concert with the Curnum or Putwarry, or village accountant, that the public concerns of the small communities, to which they belonged, were regulated and administered, and by whom, with the aid of Punchayets or Native juries, were settled and adjusted (as a branch of those concerns) the litigations occurring among their neighbours.

46. This manner of deciding disputes is of such antiquity, that the arbitrator is throughout the whole chapter of justice in the translation of the "Gentoo Code," mentioned immediately after the magistrate. That it was in general use throughout our modern territories in the peninsula, until the establishment of the present system, which has superseded it, has been fully explained in our letter to Fort St. George. It is noticed by Dr. Buchanan, of your establishment, in his tour of Mysore and Canara, as being familiar and known to every part of India, with which he was acquainted, not only in regard to the settlement of civil disputes, but also in matters of cast and religious discipline.

47. In our judicial dispatch to Madras, we have quoted the sentiments of Mr. Melville, when judge and magistrate of Dacca, in favor of giving encouragement to the use of punchayets, as expressed in answer to Lord Wellesley's interrogations, dated the 31st December 1801.

Answers to Queries circulated by the Court of Directors among their Judicial and Revenue Servants in England.

48. We have his further testimony and that of others of our servants, lately received from India in this country, as to the important and useful aid Punchayets are calculated to render in the adjudication of such disputes and questions. In the latter communication of Mr. Melville, he states that the Punchayet was an ancient and approved mode of settling disputes, which though not acknowledged nor even noticed by the Bengal Regulations of 1793, might be revived with great advantage, and be substituted for a part of the present system, and that it might be so employed as greatly to diminish the labor of the regular courts.

Answers to Queries of Court of Directors.

49. It is represented by Mr. Cox, that punchayets were used in the conquered districts until the establishment of the British government. That they were assembled by the munduls of villages. That their decisions were generally satisfactory; the process summary; the parties heard *viva voce;* no vakeels employed, and the case determined at the home of the parties, without obliging them to quit their neighbourhood.

50. Mr. Davis, also, in the very valuable communication we received from him, with an evident reference to this mode of trial, strongly recommends as a measure of convenience and advantage to the inhabitants, that "their petty grievances should be referred to the adjustment of "their associates in their accustomed mode, and in their villages."

51. Mr. Guthrie, the superintendent of police in the western provinces, in his report of the 20th of May 1812, relating to disputes respecting land and crops, observes that the adjustment of them "by arbitration or other amicable means, was the most expeditious mode of settlement, "and that which was the most likely to do justice to both parties, in cases of the nature al- "luded to."

52. Mr. Fortescue, judge and magistrate of Allahabad, in his report of 20th August 1812, has very earnestly enforced the expediency of settling cases of a similar kind (and he is for applying the principle to summary revenue suits) by the same means, at the place where they arise, "as *a species of trial well known, and understood among them,* and as frequently practised in "disputed boundaries and alluvion lands, by mutual consent, and as admirably calculated to dispel "all future cause of suspicion and doubt, by the investigation being made on the spot, and in the "presence of the whole neighbourhood who were to be witnesses to the ceremony, had oppor- "tunity to make appropriate suggestions, and who in effect became parties and guarantees to the "award,—advantages which (as he truly adds) are not to be had at the distance of the sudder "station, where, exclusive of the hazards and difficulties already stated, neither local opinions "nor prejudices, on which so much rests, can be consulted or satisfied."

53. We are aware that by Regulation XVI. 1793, the judges of the zillah courts are empowered to refer to arbitration (provided the parties mutually consent to this mode of adjudication) any suits that may be brought before their courts concerning disputed accounts, partnerships, debts, doubtful or contested bargains, or non-performance of contracts, on the suitors previously

viously entering into arbitration bonds, binding them to abide by the award, but it is only in cases where the value of the matter in dispute exceeds 200 Sa. Rs. that more than *one arbitrator* is allowed by Regulation XL. of 1793. The Native commissioners are also authorized to hear and determine such suits (not exceeding a certain amount) as persons wherever residing, may voluntarily submit to their decision under arbitration bonds.

54. We have to observe with respect to these two Regulations, that under the former one, the parties must apply to the zillah court before the arbitration can proceed, which (to say nothing of the distance of the judicial station to which they must resort) is, in itself, no inconsiderable hindrance to the obtainment of justice in this way, besides confining the power of arbitration to *one* person in a very large proportion of the cases brought into court; and that according to the prescriptions of the latter Regulation, the arbitration is likewise on the same principle restricted to one individual, and that individual a particular judicial officer appointed under the Regulation for the discharge of this duty, instead of leaving it to be performed by any indifferent person or persons on the spot, whom the litigants may think proper to refer to for that purpose; so that in neither case do your Regulations provide for the employment of arbitrators in a manner consonant to former usage. They are also ill adapted to give effect to the expeditious settlement of differences; for though the zillah judges are only required to refer the cause to the arbitrators chosen, and not to arbitrate themselves, yet there is a preparatory process to be gone through, which cannot in the nature of things be executed with dispatch by courts, which are not only overwhelmed with regular suits of magnitude, but also with summary causes, petitions for the execution of decrees, and a variety of other miscellaneous matter: nor can a Native commissioner, who is required to be the arbitrator, on parties applying for arbitration, bestow much of his time in the settlement of disputes according to this mode, having always a much heavier load of business before him in his capacities of referee and munsiff or judge, than he can effectually manage, independant of those calls upon his time and attention which are so frequently arising in the execution of his duty as a commissioner for the sale of distrained property.

55. In proposing as we do, that the adjustment of civil disputes and other questions of right and property should be committed to the heads of villages and punchayets, we do not, by any means, regard the principle as free from the possibility of abuse; no system that can be devised for a purpose so extensive in its nature, can be so considered; but the question with us is, whether the ends of justice amongst a great population (which after all, must be executed through the Natives) would not be more substantially obtained by that than by any other mode.

56. The argument in its favor may be summed up in a very few words. It will bring home the administration of justice to the very doors of the parties, and thus relieve them, and particularly the common Ryots, from that expense, and vexatious, and sometimes ruinous, loss of time, to which they are now subject when they seek judicial redress. The mundul and punchayet will have the means of information much more within their reach than they can possibly be, when the investigation is not conducted by those residing on the spot, it is bottomed on the institutions and usages which have for many ages been well known and familiar to the minds of our Native subjects, whose peculiar characteristic, as we have more than once had occasion to remark, consists in a fixed attachment to what has been long established among them, and an aversion equally rooted to what partakes of novelty or infringes on ancient custom.

57. The munduls or putwarries, or at the option of the parties, the punchayet, assembled under the authority of the former, should be empowered to act as arbitrators in matters brought before them by voluntary consent.

58. The appeal, in cases wherein an appeal is admitted, should, we conceive, in the ordinary course be, to a Native commissioner. A considerably less number of those functionaries would be adequate, probably four in each zillah, one to be stationed at the same place as the zillah court.

59. As it is highly necessary to the welfare of the community, to obtain the services of the most fit and proper persons that can be found for the office, and to secure a faithful exercise of the duty, we shall not object to the Native commissioners being allowed a fixed salary in addition to the institution fee of one anna in the rupee. The amount of salary we leave to your discretion, subject to our future confirmation.

60. A provision must also be made for the munduls and putwarries, in cases where they may have been deprived of the legitimate emoluments belonging to their offices: but upon this subject we shall reserve our observations until we come to treat of the department of police.

61. What we have stated in our judicial dispatch to Fort St. George of the 29th April last, as to the limitation of appeals from decisions pronounced in the village, or by the Native commissioners, or by the registers and judges of the zillah courts, may be considered applicable to the same gradation of judicial authority under your government.

62. The inconvenience resulting from the admission of too great latitude of appeal to the provincial courts, appears also to be greatly felt in the Bengal Provinces, and has justly attracted your particular notice, as we find from the letter of your Secretary Mr. Dowdeswell, of the 30th January 1813, to the Sudder Dewany Adawlut. We perfectly concur in the truth and justness of the following observation contained in that letter, that "it is no doubt, theoretically speaking, very desirable that every individual "who may conceive that he has suffered in his property, from the errors of inferior tribunals, "should have the means of submitting his case to the higher courts, who from their experience "and from the talents of the judges, may be best qualified to decide on the contested point; but "that all experience shews that great restrictions must be established upon the exercise of that "privilege, and that, if this be not done, the time of the superior tribunals will be necessarily "engaged

"engaged with references from the inferior tribunals regarding matters of small importance, "instead of being occupied in investigating and deciding causes of magnitude for which they "are primarily constituted."

63. We are satisfied that the several measures we have already, and shall hereafter propose in this dispatch, would greatly relieve the zillah and provincial courts,—yet we cannot conceal from ourselves the fact, that constituted as they are, a considerable weight of business will still press upon them, which can only be effectually discharged by your removing, as far as you are able, those impediments which must arise from too close an assimilation of the forms of proceeding of the courts in India, to those of the superior judicatories in this country.

64. On this subject and on another immediately connected with it, viz. the institution of vakeels, we have so fully expressed our sentiments in the judicial dispatch to Fort St. George, dated the 29th April last, as to render it here unnecessary to do more than to call your attention to them. The mass of business passing under the designation of *miscellaneous*, with which all the European Courts are overstocked, but more particularly the Sudder Dewany and Nizamut Adawlut, is also an evil which serves greatly to retard the administration of justice, and we are glad to find from the letter from Mr. Secretary DOWDESWELL already referred to, that it is at present under consideration, with a view to the application of some remedy, which it certainly requires.

65. The abridgement of the labors of the European Courts, to which we look forward, particularly in the zillah tribunals, which we intend to relieve from the charge of the police, by transferring it to the collectors, will, we trust, enable you soon to dispense with the assistant judges, and that you will also have it in your power to discontinue the employment of additional judges in the courts of appeal and circuit, if not ultimately to reduce the permanent number to two, instead of three, as is at present provided for by the regulations.

66. We take this opportunity of throwing out for your consideration, whether it would not be a very desirable measure, and one which could be effected at a small expense, to form a separate Sudder Dewanny Adawlut; for which two judges, a register and assistant, with a proportionate native establishment, would be amply sufficient for getting through, with due care and deliberation, the important duties of that court.

67. If the expenses of attending a trial in the Zillah Court should still be thought too considerable, we leave you at liberty to reduce them.

68. In considering the means of improving and rendering more efficient the administration of civil justice under your presidency, the question has arisen how far it might be expedient to employ the collectors and those engaged in that line of service, in the settlement of disputes, respecting land rent between zemindars and their under-tenants, and between the latter, and the ryots, or actual cultivators of the soil, and complaints of undue exactions on the part of the two last-mentioned descriptions of persons. It is a subject which has been particularly brought under our notice by the reference which, as appears from the report of the Sudder Dewanny Adawlut of the 17th October 1809, you had made to that court, to consider of the propriety of investing the collectors with the necessary powers for that purpose. Though nothing final has yet been resolved upon with respect to this point, we find from the report of the Sudder Adawlut, to which we have just referred, that the judges were of opinion that such a delegation of authority to the collectors "would be highly expedient," and that a similar opinion was expressed by you in your judicial dispatch to us of the 21st August 1809, in which you state that the agency of the collectors might in that way "be beneficially employed, and the courts of civil "judicature by this means relieved from a great deal of labor." We also find, on an examination of the answers to the queries we have circulated in this country, that the same sentiments are entertained by several of our most experienced servants on your establishment.

69. The adoption of the measure, though in conformity to former practice, both under our own governments in India, and those of the Native administration which preceded it, is nevertheless at variance with the declared principle of the existing judicial system, which provides for the complete separation of the revenue and judicial authorities. We are fully aware of the importance which was attached to an adherence to this principle by the framers of that Code, and we are sensible that it should not be essentially departed from, without very grave and solid reasons.

70. We have turned this matter very fully in our minds, and without meaning at present to pronounce any positive or conclusive judgment, or to issue any direct orders upon it, we shall here state to you in a general way, why we are disposed to concur with you that the revenue officers might be entrusted with the power of deciding on that particular description of cases occurring between zemindars and those below them, in regard to rents and undue collections.

71. The public revenue derivable from the land is realized either by farming it out to individuals, or by collecting it immediately from the actual occupants of the soil, through the officers of government.

72. Under the former description of settlement, the public demand is on the zemindar or farmer, and whether the settlement be permanent or only for a limited time, that demand is in either case clearly and expressly defined in the deed of engagement, and if more be collected than the regular dues thus specified, the offending party is liable to be sued in the zillah court, and is subject to penalties and removal from office, if the act be wilfully unjust.

73. The expediency of a power being lodged in the collector for the regulation of the rents of a ryot, is fairly to be inferred from the principles laid down by Lord CORNWALLIS in his minute.

74. In describing the state of the revenues previously to the year 1793, he observes that the "rights and nature of the tenures of the zemindars and the different description of land-holders

"holders and cultivators of the soil, and the means which it was lawful for landholders or "farmers to adopt, to realize their own dues or those of the public, were not ascertained; "that the vague term usage was the only rule for deciding upon any question respecting re-"venue, and the rights of those concerned in the payment of it; and that as custom varied in "almost every district, and precedent might be pleaded in justification of every species of "exaction and oppression, the reference of such cases to a court of justice, besides embarrassing "the former, would have been nugatory; that the judge, for want of established regulations, "would have been at a loss for rules to guide his decisions, and the government would have "been distracted by numerous references on which they were not ready perhaps, nor qualified to "decide; that it was found necessary at a very late period (1787) to confirm and strengthen the "jurisdiction of the collectors over revenue causes, by declaring that all complaints for oppres-"sion and undue exaction, whether made by persons employed in the collections officially or heri-"ditarily in the different gradations from government to the ryots, should be cognizable only "by the Collector."

75. These observations of Lord CORNWALLIS must indeed be allowed to be nearly as applicable to the present as to the former state of the Bengal provinces: for though the zemindars were required by Regulation 8 of 1793 to grant pottahs to the ryots, this Regulation, as we have already had occasion to observe, has been but little attended to; nor could it, if ever so strictly enforced, protect the cultivator against exaction and oppression, inasmuch as it only goes to prohibit the zemindars from demanding more from the ryots than what they before paid, or what was the usage of the country. It would therefore seem to follow, that if the judicial interference of the collector was requisite before the permanent settlement, for the protection of the ryot, it must *a priori* be so now; and that without such interference, the grand aim and purpose which Lord CORNWALLIS had at heart in adopting the judicial system, namely, the protecting the great body of the community from lawless oppression, must in effect remain unfulfilled.

76. We have in former dispatches to you expressed our earnest desire, that the principle of realizing the revenues from the ryots themselves should be introduced in all practicable cases within the Bengal territories. Under such a mode of settlement, each ryot would hold the lands in his occupation under pottahs or leases annually renewable with the collector. The rent, or the rate to be paid, would be specified in the pottah. It would not vary after the assessment was finally adjusted, nor could the ryot be removed from the possession of his fields, as long as he paid the rents attached to them,—the amount might in an unfavorable season be abated, but it could not be augmented.

77. It is further very material to be borne in mind, that when the revenue is realized by the officers of government from the ryots themselves, the European fiscal officer of the district is not, properly speaking, a collector, but a superintendent exercising controul over the conduct of others.

78. Though your regulations profess to be built upon the principle of a separation of the fiscal and juridical functions, the rule has nevertheless been virtually, if not in form, departed from in several important instances; two of which instances we shall here particularly notice, as immediately applicable to the point before us.

79. We shall just refer to the enactments framed by your government in the year after the judicial system was established, which empower the zillah judges to refer to the collectors for their *report* and *adjustment* any accounts connected with the decision of suits concerning demands, arrears, exactions or other matters, formerly cognizable in the revenue courts.—This regulation was evidently adopted in consideration of the superior fitness of the collector for investigating the merits of revenue disputes. It provides that the witnesses, the parties, and their vakeels attend the collector to be examined and heard before he makes his report. The zillah judge it is true, may set aside, or alter the adjustment it recommends. Viewing however its provisions practically, they in fact render the collector, in all cases referred to him, though not the judge who formally pronounces the decision, yet the person whose opinion on the case directs that decision.

80. The increased necessity since experienced for the aid of the collectors in the adjudication of suits as to arrears of revenue alleged to be due by ryots, appears to have led your government to proceed further, and in the year 1812, to have passed a Regulation, which, instead of leaving it to the zillah judge to refer *any* cases to the collector, requires him to refer *all* for his report, and this with a view to a summary proceeding.

81. We must own that these Regulations, as they affect both judges and collectors, appear to us to be very imperfectly adapted to the objects they have in view, which in our opinion can only be effectually obtained by a provision which should enable the zemindars on the one hand by a prompt and summary process to realize their dues from the cultivators, and thereby fulfil their engagements with the state; and on the other hand, which should extend similar facilities for the protection of the cultivators from the exactions of the zemindars. We are strongly inclined to think, that by bringing this twofold object under the *bona fide* cognizance of the collectors, subject to the revisal of the regular courts of justice by way of appeal, in cases of sufficient importance, both descriptions of our Native subjects would be greatly benefited; but as the subject is one of great importance, we are desirous that you should take measures for collecting the sentiments of the judges and collectors upon it, as well as the more detailed ideas of the sudder dewanny adawlut; and we shall expect to be furnished with the result of your own deliberations upon the general question.

82. By Regulation VI. of 1813, which has just reached us, we find you have made provision under Section 3, for settling disputes respecting property in land, by means of private arbitrators, chosen

chosen by the parties, and for the enforcements of the awards in such cases by the zillah courts. It is unnecessary for us to say that we highly approve of this Regulation, or that we do not see any sort of objection to the power you have given to the zillah judges to enforce the execution of decisions thus pronounced. We are nevertheless clearly of opinion that, where the parties in cases of the above description, may prefer the decision of a collector, either with or without a punchayet, the option should be afforded them. We here refer to disputes which do not involve an affray, or at least in which no lives are lost or persons wounded, which we take to be such, as are in the contemplation of the 3d Section of the Regulation just referred to. Here, the question would be tried before those who have to decide upon it, as a dry matter of personal right, and the investigation would be confined to the pure merits of it. But where the dispute may lead to serious breaches of the peace, so as to come within the notice of the magistrate, it would be exclusively cognizable by the collector, to whom we intend that the charge of the police should be entrusted.

83. This Regulation appears to have been framed in consequence of a reference made by you to the sudder dewanny adawlut, of the paper drawn up by Mr. FORTESCUE, the judge and magistrate of Allahabad, to which we have particularly alluded in a former part of this dispatch, and in which he strongly brought under the consideration of your government, the importance of having all questions of disputed boundaries settled by arbitration on the spot, as we took occasion to notice in the observations made by us on that paper in our judicial dispatch. Mr. FORTESCUE proposed that "the whole superintendence, as well as the original receipt of the "application for arbitration, should be transferred to the collector of the district, and that the "judge and magistrate should also be empowered to refer cases of this description to him for the "above purpose," and the reasons which he adduces for bringing those causes within the cognizance of the collector, are so strictly in accordance with our ideas on the subject, that we shall here requote them.

84. "Independant of the leisure which the revenue, compared with the judicial officers now "possess, the connection subsisting between the collector, the subordinate government, pergun- "nah canongoes, and the zemindarry village putwarries, the superior means he possesses of "ascertaining the eligibility of the neighbouring proprietors proposed as arbitrators, or in the "event of either party delaying or objecting to nominate himself, to fix upon suitable and sub- "stantial persons; his local *ruclabundies*, and settlement proceedings, and generally the many "channels of his information, the nature of his enquiries, and the special line of his official "duty, constitute him in many respects the most proper and able officer to assist and control "the arbitration, or indeed any other arrangement which can be devised for the adjustment of "this peculiar species of dispute."

85. He adds, "every collector must be sensible how very frequently those causes of dispute "come before him, in a manner that admit of immediate adjustment, were he permitted to act, "but having no authority, he can enforce no award: and he is reluctantly compelled to leave "the parties to wrangle and to refer them, as the only alternative, to the courts.—It can hard- "ly admit of a doubt, that by far the greater proportion of those transactions which are con- "nected with the quiet and happiness of the people, appertain to the possession of land and "rents: a multitude of disasters might be averted by the timely and charitable interposition of "the revenue officers."

86. We direct that disputes respecting boundaries be brought within the jurisdiction of the collector, and that if this be not already done, that decisions in such cases by whomsoever pronounced, be regularly recorded in the registers of the villages, or in those of the pergunnahs, as the case may be.

87. We also direct that similar measures to those which we have pointed out in our judicial dispatch to Fort St. George of the 29th April last, for the due enforcement of the Pottah Regulation, and for placing the superintendence of this concern, in the hands of the collector, be adopted within the territories under your government.

88. We are strongly disposed to believe that much benefit to the community would attend the revival, under proper modifications, of the powers formerly exercised by the sirdars, chowdries, mangees, or heads of professions. The utility of their services in the adjustment of differences, and the relief which they used to afford to the dewanny courts have been particularly brought under our notice by Messrs. DAVIS and COX, and we are glad to find that you have lately circulated queries on the expediency of restoring them to the exercise of their former functions.

89. We have observed in a former part of this dispatch, the custom common to India from the most remote times, of settling questions of caste and discipline thro' the medium of the spiritual heads of tribes or classes, assisted by Puramanics. The important aid derived from these institutions, has been particularly pointed out by Messrs. J. MELVILLE and D. PATTERSON, and by the magistrates of the 24-pergunnahs, in their replies to the interrogatories circulated by Lord WELLESLEY in the year 1801, as well as by Messrs. DAVIS, COX and others, in the communications received from them in this country.

90. We are also particularly desirous that every encouragement, under such checks or controul as may seem urgently requisite, should be given by the regular courts to the settlements of disputes or complaints respecting caste and discipline in the accustomed modes which have prevailed in the country.

POLICE.

91. This subject has been of late years fully brought before us in the official correspondence of the local authorities with your government, in your dispatches to us, and particularly in the Minute of Lord MINTO, dated the 24th November, 1810.

92.

92. In tracing, as we here propose briefly to do, the leading causes from whence the defective state of the police has proceeded, it is necessary that we advert to the state of the provincial administration of the country, in the early period of the British government. At that period all the powers of the state were delegated to Natives, who were not the most likely to reform the affairs of the country, or to supply their European superiors with that true knowledge of things which could qualify them to do so themselves.

93. When we afterwards assumed directly the functions of government, and administered them in the name of the Company, the settlement of the revenue, and the general management of the Police were continued in the hands of the zemindars, or subordinate Officers, of the preceding government, who had been accustomed to discharge a great part of that duty. The public authority was indeed exercised by European officers over the zemindars; but it substantially centred in the zemindars, except in casual instances of their removal for misconduct or failure in their payments.

94. On the occasion of forming the permanent settlement of the land, and of introducing the existing judicial system, the zemindars were deprived of the Police authority which they had heretofore exercised within their local limits, both under the Native governments, and our own; and the general superintendance of this department of domestic œconomy in each zillah was vested in the judges of the Courts, having under them a certain number of paid officers called darogahs, who were stationed in the subdivisions of the zillahs. These subdivisions we find in general comprehended a portion of territory of about thirty square miles. The darogahs were assisted by a small establishment of armed constables, who like themselves, were paid by the magistrate. Under this arrangement which still continues in force, the magistrates stand in the situation in which the collectors before did, as superintendents of the Police, and the darogahs in that of the zemindars, but with much more limited powers than they possessed.

95. The instruments by which the subordinate details of the Police had been conducted, in the interior of the zemindarries, were the native officers of the village establishments. Of these establishments no clear or distinct account is to be found on the records of your government, as far as we have been able to discover, but enough appears thereon, not only to establish clearly their existence, but that they are of a similar kind to those existing in the peninsula, and which we have particularly described in our judicial letter to Fort St. George of the 29th of April last. They are of two descriptions, the first consists of persons passing under the names of *Dusauds, Pasbauns, Ghorites, Negabauns, Harcas, &c.* who were immediately and permanently connected with the villages and acted under the authority of the head inhabitants. They were of very ancient institution, deriving their origin from the early periods of Hindoo government, and like the head inhabitants under whom they acted, were employed as well in the business of the collections as in the preservation of the peace within their respective municipalities. In their revenue character they were employed to convey the rents of their villages to the cutcherry of the district collector, and were stationed over the ryots in arrears. In their capacity of Police servants, they guarded the crops of the ryots from depredation: they had charge of the stocks; and they served as guides and protectors to travellers passing from one village to another. It was their duty also to collect information, in their neighbourhood, of offences committed, and to report suspicious persons who entered the village.

96. The pykes, or chokedars, who formed the other description of public officers, were more or less numerous according to the discretion of the ruling authority, or of the aumils and zemindars who represented it in the interior. Their duty was almost exclusively confined to the apprehension of offenders and the prevention of breaches of the peace. They, as well as the former, were maintained by grants of rent free land, or at low rents; but they did not, it is believed, like the Dusauds &c. form an integral part of the constitution of a village community, nor receive contributions from the inhabitants: they were district rather than village servants, being of the nature of Police militia bands.

97. In addition to the means thus provided for the preservation of the public peace, the zemindars had at their command the officers employed in the collection of the sayer or internal duties, and those stationed at the gunges, hauts and bazars, all of whom were required to lend their aid as Police agents.

98. The establishments both pasbaun and pyke, though in a mutilated and deformed state when the present plan of police was established in 1793, were however to be found in almost every part of the country, and in many parts in great strength of numbers; in the zemindarry of Burdwan alone, as will appear by a letter from the magistrate dated 12th October 1788, there were at that period no less than 2,400 pasbauns, or village constables, and 19,000 pykes.

99. By the 13th Section of Regulation XXII. of 1793, for the provinces of Bengal, Behar, and Orissa, the pasbauns, pykes, and chokedars, were declared subject to the orders of the darogahs, or new local superintendants under the magistrates of zillahs, who were required to keep "a register of their names, and upon the death or removal of any of them, the landholders, or others to whom the filling up of the vacancies might belong, were to send the names of the persons whom they might appoint to the darogah of the jurisdiction, that they might be registered."

100. But these provisions, the former of which in a zemindarry country could not be promptly enforced, without the aid of the zemindar and the heads of villages, both of whom were excluded from any concern in the Regulation of the police, and the latter of which left the village watchmen dependant on the zemindar for his appointment, at the very time that the zemindar himself was deprived of all public authority, have by no means been attended with the desired effect of obtaining the co-operation and services of this description of Police officers. We also find

find that at the very time that this provision was made, for securing as it would appear, the services of the pykes and pasbauns, the Government, by Regulation I. 1793, reserved to itself the option "of resuming the whole or a part of such allowances as had been made to the zemindars "in the adjustment of their jumma, for keeping up thannahs of police establishments, or of the "produce of any lands which they might have been permitted to appropriate for the same "purpose;" and by Regulation XXII. of the same year before referred to, required them to discharge such establishments, and prohibited them from entertaining any such in future.

101. Under the first of the abovementioned clauses, which expressly excepted the lands and produce of the pykes from the assets on which the jumma of the zemindars was calculated, extensive resumptions of both were made in different parts of the country, which were converted into a fund for defraying the expences of the new plan of darogah management.—The receipts from this source were but of very trifling amount, and were very far from meeting the charges which they were designed to cover. In fact, a considerable number of the pykes would appear to have retained their lands or produce under collusive engagements with the zemindars, but of course without any stipulations of service to be rendered in aid of the Police, the zemindars having been themselves deprived of all connection with the charge of that department within their boundaries, and indeed prohibited from keeping up any establishments of police.

102. We find that at an early period of our administration of the affairs of the Bengal Provinces, territorial resumptions of a similar kind had been made; and that the effect with which the measure had been attended on the internal police was brought under the notice of government by Mr. Hastings, in a Minute dated 19th April, 1774. His immediate object was to represent to his colleagues the alarming prevalence of decoity in different parts of the country, as signified to him from various quarters. He was naturally led to enquire into the causes from whence this evil sprung, one of which, he stated to be "the resumption of the *chaukeran zemeen*, "or lands allotted to the zemindars and pykes for their services in guarding the villages and "larger districts against robbers."

103. He proposed that the chaukeran zemeen which had been included in the jumma or rents fixed with the zemindars and farmers, "should be again separated from it, and applied to "their original design. I cannot (he further stated) recommend this institution better than "by mentioning it as the universal practice of all nations of India and of the most remote an-"tiquity."

104. The proposition was ordered to be carried into effect, but to what extent, in what mode, and with what success, is not known by us.—We have been induced here to allude to this passage because we think it strongly shews that the course of proceeding which was adopted in 1793, in regard to the pykarry lands, was opposed by past experience.

105. That many abuses had crept into the police establishments under the relaxed and disordered state of government which prevailed when the judicial system and permanent settlement of lands were established, and that the individuals belonging to them greatly neglected their trusts, we can readily conceive; for inefficiency and the perversion of all instituted Regulations pervaded every department of the state; but this, though a reason and a very strong one, for reforming those establishments, and bringing them back to their original uses, under a proper and efficient control, furnished none for the overthrow or neglect of institutions which experience had abundantly demonstrated, ought to have been incorporated as closely as possible with our system of Police, and have formed the principle on which any arrangement for conducting the affairs of this department should have been founded.

106. We have particularly examined your records for the purpose of ascertaining the sentiments of the judicial servants under your government on this important subject; and also of forming a correct idea of what had been the effects which had resulted from the line of proceeding pursued by you in the year 1793, in regard to the village Police—establishments then existing.

107. The indispensable necessity of such institutions to an efficient Police, the utter impossibility by any other means of gaining any but the most imperfect knowledge of the commission of crimes and misdemeanours, or of obtaining the support and co-operation of the great body of the community in aid of the Police, the injurious consequences which have arisen to the peace of the country and the personal security of the inhabitants, from the resumptions which had taken place of the lands appropriated for the maintenance of the village Police, and from leaving what still survived of that institution, no better than a neglected and disjointed outwork of the system;—all these circumstances we find, from the enquiries we have prosecuted into this subject, were soon very strongly felt, and have been the continued theme of earnest representations by almost every judge and magistrate under the Bengal government, up to the latest accounts we have received.

Report of Mr. Camac, judge of provincial court of Calcutta, of 5th Oct. 1800.
Answer of Sir H. Strachey, judge of the same court, to Lord Wellesley's queries, of 2d Sept. 1802.
Report of Magistrate of Nuddea, 16th January 1802.
Report of magistrate of Burdwan, 9th March, 1802.

108. From these communications, some of which we refer to in the margin, we learn that besides the lands of the pykes, pasbauns, dusauds, &c. which had been resumed at the time of the permanent settlement under the orders of government, many other resumptions have since been made by the zemindars and others, that from both these circumstances they have been reduced to a state of want, which has driven them to a life of robbery and plunder for a subsistence; that acquainted as they particularly were with the habits, connections, circumstances, and affairs of the people, and also from the nature of the duties which they had been accustomed to render as Police officers, they were thoroughly aware of the best means of eluding detection, and were thus enabled to pursue their schemes of nightly depredation with the greater success and least danger of discovery; that those who did not actually join in those practices were generally

nerally found to be indirectly concerned by overlooking the acts of public offenders and securing them from the knowledge of the darogahs, or district officers, and that thus what ought to constitute the great strength of the Police was in fact turned against it; that (except indeed those who might in particular cases be kept up by the more opulent zemindars for the security of their more immediate possessions, or by merchants for the protection of their own property) such of the pykes, pausbauns, dusauds, &c. as were continued in the service of the landholders, had sunk into mere revenue officers, constantly at the call of the zemindars; that when the magistrates and the darogahs under them were in want of the aid of either, they found it under these circumstances difficult to procure it.

Answers of provincial court of Dacca, of 9th June, 1802.
Report of Mr. Wintle, magistrate of Backergunge, 7th January, 1802.
Ditto of provincial court of Moorshedabad, 23d Jan. 1802.
Ditto of Mr. Sturt, magistrate of the city of Moorshedabad, of 17th March, 1802.
Ditto of Mr. Boddam, magistrate of Sarun, of 16th December, 1801.
Ditto of Mr. Tufton, magistrate of Behar, 9th Dec. 1801.
Report of Mr. Ernst, acting judge of provincial court of Calcutta, of 15th November, 1805.
Report of Mr. Thomson, judge of provincial court of ditto.
Ditto of provincial court of Benares, of 24th Dec. 1805, and of 24th April and 1st November, 1807.
Ditto of Mr. J. Stuart, judge of do. of 5th Feb. 1808.
Mr. Sec. Dowdeswell's report on the police of Bengal of 22d Sept. 1809.
Letter from the judge of the prov. court of Calcutta, to Government, of 23d August, 1811.
Superintendant of police for lower provinces, of 30th Aug. 1811.
Ditto 15th June, 1811.
Report of Mr. Elphinstone, judge of prov. court of Patna, 8th March 1812.

109. We further find that the state of the village police in the ceded and conquered provinces of recent acquisition (where there are strong reasons for believing, that on their annexation to the British dominions it was in a tolerably effective condition) is in fact falling into decay for the want of any provision being made for its due regulation, and for securing to the individuals who compose the establishments their just emoluments, and that there, as well as in the lower provinces, the mofussil police officers are betaking themselves to robbery and plunder for a maintenance.

110. In our judicial dispatch of the 20th October 1813, wherein we strongly pressed upon you the necessity of preserving and restoring the system of village police, we adverted to the fact brought by Mr. THORNHILL, the magistrate of zillah Bareilli, under the notice of Mr. BROOKE, the judge of circuit in the year 1808, that the zemindars had withdrawn the payment to the village watchmen, who had been compelled to quit their employments, and that unless some effectual means were speedily adopted for the appointment of village watchmen, "those whose names "were still on the register would be obliged to follow their brethren, and seek by plunder that "subsistence which they ought to derive from the persons whose lives and properties they are expected to protect."

111. We also find Mr. BROOKE, in a report which he in the same year made to the nizamut adawlut, respecting the zillah of Allahabad, after observing that "it must be admitted that no "Police could be effectual, which does not combine with it the co-operation of the great body of "the people, and has no regular establishment of village watchmen, to convey intelligence either "to the Police tannahs, or the magistrate," proceeds to state that "the various reports which had "been made by the circuit judges fully established, that crimes of every description, with exception to affrays, were less frequent in these provinces than in Bengal; and that from respectable "authority he had also been assured, that in those parts of the ceded country in which there existed "any vigour in the former administration, crimes were less frequent than since the establishment "of the British government." He adds "if this be the case, and of which I scarcely entertain a "doubt, the basis of a vigorous Police was ready prepared to our hands. All that was requisite was "to perfect and strengthen that system where it might be deficient, and to ameliorate it where it "might be too harsh and severe. It would therefore be desirable that the nizamut adawlut "should take under their serious deliberation the situation of the upper provinces, before the ancient usages of the country be annihilated, and the energy of character and habits of the people "be lost,—consequences," he states, "which will probably follow the establishment of the same "system of Police which exists in the provinces below."

112. We learn likewise from a letter of the same judge of circuit to Mr. PERRY, the magistrate of the zillah of Etawah, dated ——— that the darogahs of several tannahs, having prohibited the dhannues, (a description of Native Police) from rendering assistance to the zemindars in the collections, "many of the zemindars had deprived them of their lands, and the peasantry had "withheld the usual contribution of grain, being the chief resources from which they derived "their support."

113. By Mr. GUTHRIE, the superintendant of the western provinces, it is stated, that it did not appear that the darogahs of Sydabad had used any endeavours to establish the means of intelligence respecting occurrences happening in the interior of their respective jurisdictions, but depended in that essential point on the reports brought them by the bullahurs, (village Police officers) which were not to be relied on, "as there were many villages without bullahurs, and as yet, he be-"lieved, no fixed rules had been established for their regular control and maintenance."

Report to Mr. Secretary Dowdeswell, of the 10th Nov. 1811.
Criml. Con. 10th Dec. 1811. No. 37. para. 20.

114. The same public officer, in a subsequent report, further observes, with respect to Cawnpore, that the darogahs "had no established channels of intelligence either through their own "establishments or the zemindars, of occurrences happening in the interior; and that they were "consequently without the means to prevent the commission of crimes, or to discover those by "whom they were perpetrated."

Report to Mr. Sec. Dowdeswell, dated 29th Jan. 1812.
Criml. Con. 12th March 1812. No. 40. para: 4.

115. We find from your records, that in some particular instances, it has been made a point of policy by your government to uphold and cherish the Native institutions of Police, and that wherever this course has been adhered to, it has been attended with the best possible effects.

116. The first instance of this kind occurred in the year 1799, and refers to the Jungle Mohauls, a portion of country, situated in the present local division within the zillahs of Midnapore, Beerbhoom and Burdwan. Very serious disturbances had been excited in these mohauls, by the pykes, who heretofore enjoyed at a small quit rent, tracts of land, in consideration of the services they performed, but of the beneficial interest in which they were deprived by the zemindars, under the general operation of the regulations, in consequence of which the pykes committed the most cruel and wanton outrages on the more peaceable inhabitants, laying waste the country as far as their ravages extended.

Jud. Dispatch 31st Oct. 1799.

117. Under these circumstances the pykes were again restored to their lands on a footing somewhat similar to that on which they had before held them, and placed under the orders of the zemindars, and other landholders, who were again invested with the general charge of the Police

Police within their estates as darogahs.

118. This arrangement, which was at the same time extended to Ramghur and several adjoining pergunnahs, was proposed and carried into effect by Sir HENRY STRACHEY, the judge and magistrate, who in his report to your government expressed his wish that the plan should in the first instance be considered experimental. "If at this time" (he observed) "I should attempt to frame a complete "regulation, detailing all the rules that I conceive necessary for the guidance of those zemindars "in their capacity of Police officers, I should run the risk of framing one which it would be ex-"pedient to alter or annul in the course of a very short time. My chief object in drawing out "these rules has been to make them short, simple, easily understood, and suitable to the ideas "and capacities of those for whom they were framed."

Letter of 9th Apr. 1810.

119. This arrangement proving successful, it was permanently established by a special regulation, and it still continues to answer its intended purposes with the best effect, as is evinced by the half yearly reports of the judges of circuit. No disturbances have since occurred; the mohauls have remained orderly and quiet, and the superintendant of the Police of the lower provinces in his report of the 20th August 1812, after noticing "the well-regulated state of the Police," observes "that "not one instance of gang robbery had been known to have occurred during the last sixteen months." The second judge of circuit also, in his report of the 25th October 1812, gives an equally favorable account of its Police.

Reg. XVIII. of 1795.
Criml. Con. 5th Sept. 1812. No. 1.

120. We shall next refer to the province of Cuttack, which was acquired from the Rajah of Berar in the year 1803, Mr. MELVILLE, was appointed a commissioner for settling the affairs of it. He made himself acquainted with the system of Police therein prevailing, and finding, as he represents, heinous crimes and offences were far less frequent in that province, than in those parts of the British territory bordering upon it which had been many years under the British government, he recommended the continuance of the system which he had found established, and his proposition was sanctioned by a special regulation passed in the year 1805. From this regulation it appears that, it was "the "practice of the Mahratta government to vest the immediate maintenance of the peace in certain "*sirdar pykes*, also called *kandytes*, aided by inferior pykes, under the orders and controul of the "said sirdars, for whose support lands were assigned under the general orders and authority of the "said government, and that the general control of the said sirdars and other pykes was vested in "the zemindars, &c. within the limits of their respective estates and farms, excepting in cases in "which they had been specifically deprived of the charge of the Police by the said government, "either for inability to perform the duty entrusted to them, or for other substantial reasons."

Answer to 2 Queries, circulated by the Court of Directors.

121. This was the system for an adherence to which the regulation of your government provided; a regulation which also contained special provisions for securing the *pykes their service lands*, and for rendering it the duty of the darogahs, "whether zemindars or others,"—under the guidance of the magistrate to fix the local limits of the sirdars and other pykes, so that, as it is declared in the regulation, "every part of the province of Cuttack might receive the protection of the subordinate "officers of Police."

122. That the course thus pursued has been productive of the most salutary results, is established by the uniform tenor of the reports of your judicial servants, down to the earliest accounts we have received.

123. After the second sessions of 1805, the judge of circuit, Mr. THOMPSON, reported, that "it gave him much pleasure to notice for the information of government, that in travelling through "Cuttack, *he found it in a state of perfect tranquillity*." At the second sessions of 1809, Mr. D. CAMPBELL the judge of circuit, reported that "although no jail delivery had been held at Cuttack "for upwards of a year, he found only 25 prisoners for trial, and most of them committed for trifling "offences, such as thefts and burglaries; that he was extremely happy to observe that the crime "of gang robbery was not known in Cuttack." The subsequent reports of the circuit judges and the superintendants of the Police down to the latest period, are in direct confirmation of what is above stated.

124. In the province of Hurryanah, forming part of the territory under the resident at Delhi, and which was placed in charge of one of his assistants, Mr. GARDNER, that gentleman appears to have acted upon the same principles in the arrangement of its Police. He called into activity the services of the village watchmen under their natural superiors the mocudims, as being "conformable "to former custom," and he states that it had been attended with the greater success, a second robbery seldom or never occurring at the place where it had been once enforced,—while the resident Mr. METCALFE in his letter to Mr. Secretary DOWDESWELL of the 25th December 1811, particularly speaks "of the perfect tranquillity and subordination and the excellent Police of the heretofore unmanageable, distracted and plundered district of Hurryanah."

125. We shall lastly advert to another recent instance of the advantages experienced from calling into operation the Native village Police of a zillah which had been the worst regulated of almost any in the country. We allude to the zillah of Burdwan.

126. In the year 1810, Mr. BUTTERWORTH BAYLEY was appointed to the office of magistrate of this zillah, and in his letter to the register of the nizamut adawlut, dated 23d January 1811, he gives a view of the actual state of the district, and enters into a general explanation of the measures he had employed, "as well with the view of diminishing the immediate prevalence of gang "robbery and other heinous crimes, as of giving a paramount vigor and efficiency to the Police."

127. The extraordinary improvement in the state of the Police of the district in little more than twelve months, and which had particularly attracted the attention of the officiating judge of the Calcutta division, in his letter to the secretary in the judicial department of the 14th February 1811, is represented by Mr. BAYLEY "to have arisen from the gradual operation of simple causes, and not "from the introduction of those violent measures which both in their immediate effects and

"ultimate

" ultimate consequences might perhaps be justly considered to be an evil equally injurious to socie-
" ty as the prevalence of gang robbery itself." He then enumerates the causes of it, the principal of which he states to have been " the uniform punishment and dismission from office of the village " watchmen, wherever there was any appearance of neglect or connivance on their part in rob-
" beries, and to the rewards which had constantly been given to them on any proof of bravery,
" activity or good conduct in opposing or apprehending decoits; to the exertions made by him for
" obtaining a more adequate subsistence for the village watchmen, by carefully preventing all
" attempts on the part of the talookdars to resume any part of their chackeraun lands, and by
" encouraging the head villages to subscribe a more liberal remuneration for the support of their
" chowkeedars than had hitherto been customary."—The munduls who, being the principal fixed residents of each village, and, as Mr. BAYLEY states, " were vested by long usage with considera-
" ble local authority and immunities," and the chowkeedars under them, were the chief classes upon whom he deemed it requisite to call for particular assistance both in furnishing information and active aid in the improvement of the Police; he however took mochulkas, not only from these, but also from the landholders, gomasters, venders of spirituous liquors, pawnbrokers, gold and silver smiths, &c. explaining to them personally the duties they were enjoined to perform, and the practices from which they were expected to refrain.

128. In the report of the officiating judge of circuit of the 14th February 1811, already referred to, it is stated of this zillah, that " gang robbery, formerly so prevalent, had become nearly
" extinct, and a regular system had been introduced, which promised fair to secure the co-ope-
" ration of all parts of the community in the detection and apprehension of offenders."

129. It is this co-operation of the people in support of the Police that is so much wanted in the territories subject to your presidency, and to the absence of which we may, not less from the test of experience, than from the recorded authorities of a long list of your best informed servants, ascribe in a great measure those flagrant disorders, which had at no distant period so alarmingly outraged the peace of the lower provinces, and rendered both persons and property utterly insecure. By a strenuous effort simultaneously made on the part of the local magistracy, and powerfully aided and seconded by the superintendants of the Police whom you had appointed to the upper as well as the lower provinces, these crying evils, so disgraceful to the internal management of the country, have been greatly subdued, and more especially in regard to that most heinous offence gang-robbery, which is represented to us as having nearly disappeared, except in some of the zillahs of the provincial division of Moorshedabad, where it has again manifested itself in a serious shape, as we learn from your judicial dispatches of the 25th April 1812, and 30th January 1813, and from the reports therein referred to. We cannot look for a permanent continuance of the present improved order of things, until we see the establishment of those measures of prevention, which can alone be adequately and steadily secured by the general restoration of the old system of village police, immediately superintended by the munduls or heads of local divisions, the whole being placed under the orders and control of those entrusted with this branch of civil regulation in each zillah. These certainly form the permanent natural authorities of an Indian country, they connect the people with the government, and preserve the parts of the social machine in a state of cohesion; the inhabitants of the country without those points of union, must soon become a dispersed and disjointed multitude, having no common interests to bind them together, or at least not possessing the means which can enable them to act confederately for their preservation, when disturbed and invaded by the hand of violence and rapine.

Dinagepore, Purneah, Rajeshahye.

130. The defects of the existing system of police in the Bengal provinces, deprived as it is of those important aids by any general plan of operation, which is calculated to secure them, are justly described in the very able and enlightened report of MR. J. STUART, formerly a circuit judge for the division of Benares, but now one of the members of the nizamut adawlut; nor are his observations on the subject less worthy of attention. " The Police administration if I may be
" allowed the expression, has no root in the Native soil of the community. It is purely artificial,
" with so little adaptation to local peculiarities, that it would equally suit any country on the face
" of the globe. British magistrates are placed over the districts; each district is arbitrarily di-
" vided, into square portions of ten coss, and these are guarded by small establishments of peons,
" headed by Native officers of our own creation, called police darogahs, in the selection of whom
" no attention is paid to any local fitness. The magistrate, in his endeavours to protect the
" community, must place his sole reliance on these establishments. The arrangement
" is not interwoven with any institutions which previously existed in the country. In
" maintaining this opinion, unless I greatly deceive myself, I may appeal to the ge-
" neral practice of almost all nations, originating doubtless in circumstances and feelings,
" common to all mankind: the natural mode of managing men, is to employ the agency
" of those who from the relation in which they stand to them, they regard with sentiments of
" respect and confidence; accordingly all governments seem to have made the authority of their
" Native leaders, the basis of their police: and any hired police establishments, which they may
" maintain, are not intended to supersede the Native Police, but to superintend, watch over and aid
" its effects. To take," continues Mr. STUART, " an example with which we are all familiar in our
" own country, we all know what services the society contributes to its own protection. We know
" how much vigour is conferred on its Police, by the support which it receives from Native gentry,
" from respectable landholders, from the corporations in towns, and from substantial persons of the mid-
" dle classes in the villages; we can form some conception of the mischiefs, which must ensue if that
" support should be withdrawn, and an attempt made to compensate it by positive laws and artifi-
" cial institutions. It is not indeed necessary to travel beyond the territory of this government
" in quest of examples to establish the principle. These limits afford us some striking instances of
" the advantages which may be reaped by attending to it, and of the evils which arise when it

" is

" is neglected."

131. By a regulation recently passed by your government, it is provided that any village watchman proved guilty of gross neglect or misconduct in the discharge of his duty as a Police officer, shall be liable to corporal punishment. You appear also several years before to have passed a regulation, for ascertaining what number of persons answering that description were maintained, and by which every landholder employing pykes, chowkeedars, pausbaans, &c. was required to transmit to the magistrate at stated times " a list of their names, occupations, place of residence, " and *allowance in land or money*, under a penalty for the neglect of so doing." Neither of these regulations however in any manner provides for reforming or restoring the village establishments, having only in view to secure as much service from the existing establishments, as in their enfeebled and unprovided state they might be capable of rendering. Nor do we find from your dispatches of a subsequent date, that any measures have yet been adopted, even for giving effect to that limited object, by any general and systematic plan of operation, unless as far as relates to the Police of the cities of Dacca, Patna, and Moorshedabad.

132. We are ourselves satisfied that it is not by merely calling for returns from the zemindars to be made to the magistrates of the number of pykes and other Police officers maintained by the former as required by Regulation XII. 1807, that this information is to be obtained, and that it is procurable only through investigations set on foot and prosecuted by the collectors, armed as they must be with the necessary powers to assist them in this work. This indeed seems to have been felt by Mr. Secretary DOWDESWELL, who in his report on the Police of Bengal, dated the 22d September 1809, proposed that those officers should be required to form the register.

133. It only remains for us on this subject to direct, that measures be taken for the gradual establishment throughout the country of an efficient village Police, properly maintained and provided for, which shall be placed under the orders and controul of the Company's magistrates, and subject to such rules and regulations, as on a reference to the zillah judges and collectors may be found best calculated to answer the purpose of such an arrangement, and as may at the same time have reference to the former practice of the country. The officers and servants composing this municipal Police from the mundul downwards, appear to have been generally provided for, partly in land, rent free, and part in allotted shares of the crops of their neighbours, or in contributions in money; and these modes of remuneration, we conceive, it would be wise to adhere to. We are decidedly of opinion that the principle of endowing the officers with land should be steadily kept in view in all practicable cases, as being in itself the most respectable and most permanent kind of provision. It has probably been from these considerations, that this kind of provision has been almost uniformly recommended by those judges and magistrates who have proposed at various times the revival of the village Police. We have little doubt that a proper course of enquiry would in innumerable instances bring to light irregular and surreptitious assumptions of territorial allotments, which properly belong to the village police. These should be resumed and applied to their original uses, care being taken in the exercise of this power, not to interfere with the just rights of any party. Where the permanent settlement has taken place and the produce of the Police lands were excluded from the assets on which the jumma was calculated and fixed with the zemindars, alienations of land of this latter description would also on general principles be justly liable to be restored to their former purposes, and where this may not be the case, an arrangement should be made with the landholders for obtaining from them allotments of land for the Police officers. In providing also for these officers shares of the crops, or money contributions from the inhabitants of the villages, it will be extremely necessary to ascertain whether they are not already subject to such payments, though clandestinely diverted into an improper and unauthorized channel. In the Regulation also of such payments to the village Police, not only with respect to their amount but their mode, and the descriptions of persons who are made subject to such demands, it is highly important that the best means be taken for enquiring into what has been the custom in those particulars. Such enquiries will be materially aided by communication with the people of the villages, and a reference to the old accounts where obtainable.

134. The size and extent of the zillahs would still render an intermediate agency between the village officers and the magistrate, in a greater or less degree requisite. The agency of that description, which it would be expedient to employ, must very much depend on the consideration whether the superintendance of this department of internal regimen in each zillah continue to be vested in the judge or be transferred to the collector. We have in our judicial dispatch to Fort St. George explained our reasons for having directed the adoption of the latter measure in the territories under that presidency, and as we consider those reasons to be also applicable to the local circumstances of the British possessions subject to your authority, we refer you to that dispatch for the grounds on which we have determined to extend the principle thereto.

135. From what we have there stated on this subject you will perceive, that we enforced the fitness and expediency of a recurrence to that principle, from this consideration, that it is with reference to the Native institutions of the country, the most favorable to the bringing into efficient service its municipal Police. We must add, that independant of this most important and essential consideration, the collector must under any circumstances be far better qualified to superintend the Police, than a civil or criminal judge can ever be, who is necessarily confined to one spot, engaged in a sedentary occupation, which does not admit of his moving about the country, or of that intercourse with the people so essential to the due discharge of the duties of a magistrate, and to the efficient supervision and control of those employed under his authority, in the fulfilment of those duties.

136. It is truly observed by Mr. Secretary DOWDESWELL, in his report above referred to, " that

"that there can be no Police in India unless the magistrates will from time to time visit the different tannahs, listen with their own ears and see with their own eyes, instead of depending on the reports of officers." It would be needless to shew that the nature of their judicial functions requires that the present magistrates should remain fixed at their respective stations, which renders them therefore unable to attend to the abovementioned necessary points in the administration of the Police.

137. Where tehsildars are still retained, their agency in every practicable view of the subject should be employed, between the collector as magistrate and the village Police.

138. We are thoroughly sensible (indeed it is impossible we should not be, after perusing your records, and particularly the report of Mr. Secretary DOWDESWELL, of the 22d September 1809), of the great abuses practised by the darogahs, and of their general deficiency in the proper qualifications for the office: but we do not at present see how their services can be dispensed with, unless we were prepared with some other arrangement to substitute for that system. We look therefore rather to the gradual reduction of the establishment, as circumstances may justify, than to the total abolition of it.

139. Much unquestionably depends upon the vigilance with which the conduct of the darogahs is looked after, and the vigor and energy with which it is directed and controlled. The good effects which have resulted from the exertions that have within the last few years been made for that purpose in many districts, are amply testified by the reports of the judges of circuit and superintendants of the Police: and we are well persuaded that the collectors will have it much more in their power effectually to superintend the darogahs in the execution of their trusts, than it is competent for a zillah judge to do.

140 In the course of our examination into the general principles of the Police within the Bengal possessions, we have naturally been led to consider the question (and it is a question of no small practical importance) how far it would be advisable to adopt the policy of again employing the zemindars in the management of the Police within their own boundaries. We have in our judicial dispatch to Madras of the 29th April last, in treating of this same question, as applicable to the zemindars under that government, expressed our apprehensions that any measures for securing their aid and co-operation in support of the general Police, would not answer any useful end, though we were at the same time very desirous that such measures should be pursued, wherever they furnish a rational prospect of success. Those apprehensions, as we on that occasion stated, were founded "on the failure (as we expressed ourselves) of all endeavours of a similar nature "under the Bengal government." A more recent and more particular consideration of your past proceedings, on this subject, has raised some doubts in our minds whether any unqualified inference is fairly to be drawn against the expediency of the principle, from the ill success of those endeavours to which we alluded; whether in short those endeavours were really calculated to bring the point to the issue of fair and conclusive experiment. We here particularly allude to the provisions of Regulation XII. of 1807, a Regulation passed in consequence, as it is declared "of the "Police establishments in the several districts of Bengal, Behar and Orissa, having been found in-"sufficient for the purposes of their appointment," and having in view the uniting the influence of the zemindars with the power of the darogahs. This Regulation provided for the granting of commissions "to such of the landholders, farmers and other inhabitants of credit and influence, as from "their qualifications and character may be considered deserving of confidence, and disposed to "make a proper use of the means which they possess, in promoting the maintenance of the peace, "preventing the commission of crimes, and apprehending offenders." The rules for their conduct were similar to those prescribed to the darogahs; but they were restricted from taking cognizance in any manner whatever, unless specially referred to them by the magistrate of those petty offences and misdemeanors, such as "abusive language, trespasses of men or cattle, and inconsiderable as-"saults or affrays, adultery, fornication and calumny,"—a power which, at least as far as is extended to the apprehension of individuals, had hitherto been allowed, and was still continued to be exercised by the darogahs. They were also required to deliver over persons of the descriptions they were authorized to apprehend to the darogahs of the jurisdiction in which they resided, instead of sending them, as was done by the darogah, direct to the magistrate. The Regulation was afterwards extended to Benares and the Ceded and Conquered Provinces. It was not long passed before Mr. STUART observed, with respect to the inducements which it held out to landholders to give effect to its purposes, that "he saw none else but the temptation of being raised to the same level "with petty Police officers, and not quite that indeed, for the aumeens would be to a certain degree subordinate to the darogahs." The Regulation was soon afterwards repealed, as nugatory, scarcely any person having been found willing to accept the office on the prescribed terms.

Regulation 6, 1810.
Report of Mr. Secretary Dowdeswell, dated 22d Sept. 1809.

141. We find that about the time that Sir HENRY STRACHEY was engaged in reforming the Police of the Jungle Mohauls, and on the principle of reinvesting the zemindars with the charge of darogahs as in other parts of the British territory, the government took the opinions of the judges of circuit, and of some of the magistrates, as to the expediency of adopting the same principle in the other parts of the country. They were induced, as it would appear, to make this reference from the experienced deficiency at that period of the darogah system; and the local authorities who were consulted, with the exception of the magistrates of two zillahs and the court of circuit of Moorshedabad, were decidedly in favor of the measure.

Judges of Circuit for divisions of Calcutta, Patna, Dacca and Moorshedabad, Magistrates of Beerbhoom, Ramghur and Burdwan.

142. This subject has also been very ably and elaborately handled by Mr. STUART in his report of the 5th February 1808, to which we have already referred, in which he strongly advocates the expediency of employing that description of persons in the administration of the Police; a measure which we also find to be recommended with much earnestness by Mr. EDWARD STRACHEY, second judge of circuit for the division of Moorshedabad, in his report dated 19th August 1808, and by Mr. ELPHINSTONE, the second judge of circuit for the division of Patna, in his report dated 8th June

June 1812. The arguments by which that proposition has been maintained, are, we think, well deserving of attention, as applicable to the larger zemindarries, consisting of a whole pergunnah or more, or even of several villages.

143. If among the zemindars are to be found the leading gentry of the country, its principal landholders, and if they possess more influence and weight with the inhabitants than any other class of individuals, it seems difficult to conceive any ground sufficiently strong for shutting them out from all concern in the management of a branch of domestic administration, in which, from their absolute and relative situation, they must on the one hand, generally speaking, have it so much in their power to render useful service, and on the other of impeding and frustrating when so disposed, the operations of that department. It must be remembered, as we have noticed in a former part of this dispatch, that the very persons who compose the village Police, are also employed by the zemindars or their under farmers, in the collection of the revenues, and that under these circumstances the zemindars have it in their power, in many different ways and under numerous pretexts, to withhold the services of those persons from the magistrate; and in this spirit they will naturally be inclined to act, if unfriendly to a scheme of Police of which they no longer have the charge within their zemindarries. In such a case (and your records shew that it is not an ideal one) a strong local influence, which should be employed in aid and furtherance of its operations, would be employed to counteract them. Where a zemindar is jealous of, or adverse to the proceedings of the magistrate (and in general he is so), the magistrate will have arrayed against him the train of dependants belonging to that zemindar, who must have much more influence over them than such an insulated individual as a darogah, seldom possessing local consideration and respectability, can possibly have over the inhabitants of the zemindarry. Indeed it but too often happens, that the darogahs, by the temptations which the zemindars have it in their power to hold out to them, enter into the views and designs of the latter, however at variance with their duty or the purposes of their appointment.

144. In the zemindarries which are frequently changing hands, or which, by the operation of sales and other causes, have been reduced to small and insignificant portions of land, we certainly think that it would be clearly inexpedient to employ the proprietors of them in the capacity of darogahs; and we hold the same opinion with respect to those agents, or farming contractors, who manage the zemindarries of those proprietors who do not reside within them, which we are concerned to find is by no means an uncommon case. But we are much disposed to think that, in many other cases you might, with advantage to the public peace, avail yourselves of the services of that class of persons in the administration of the Police, more particularly when this department shall have been transferred to the superintendance of the collector. The internal security and good order, which is represented to prevail in Cuttack, in the Jungle Mohauls, and in the territory near Delhi, under the management of Mr. GARDNER, in all of which the more considerable zemindars officiate as darogahs, is a consideration, which weighs with us in favor of a trial of the principle in other parts of our possessions.

145. We also find, from the report of the superintendant of Police in the lower provinces, dated the 15th June 1811, that in the zillah of Rungpore, the zemindars had "in many instances rendered effectual assistance, when required in the apprehension of offenders; that they communicated to the Police intelligence of the crimes occurring within their estates, and that he himself generally received similar communications from the zemindars."

146. It is not our intention to pursue this matter further, leaving it to your consideration whether means might not still be devised for obtaining the co-operative service of those zemindars in each zillah, who possess a local influence within it, and who, if they could once be brought to lend their voluntary aid in the preservation of the public peace and security, could not fail essentially to promote that important purpose; and without it any measures of Police, however well concerted they may be in other respects, must still ever be materially defective.

147. We shall only add, that whether it be found expedient or not to entrust the zemindars with the authority of Police darogahs, it certainly is so, that they may be made responsible under severe penalties for giving information of public offenders. We therefore highly approve of the Regulations IX. of 1808, I. of 1811, and III. of 1812, which provide for that necessary object.

148. We have hitherto confined our observations to that branch of your Police which regards the means of discovering and apprehending public offenders, and bringing them to justice. We are, if possible, still more struck with the great deficiency of the means provided for the hearing and deciding upon those petty offences and misdemeanors, which are properly brought within the judicial cognizance of this department. We here particularly refer to what are termed in your Regulations, "calumny, abusive language, slight trespass, inconsiderable assaults, and petty thefts," offences which, though of a minor description, it is of great importance to the permanent welfare of society, to prevent and suppress.

149. The only persons who, under the Regulations of your government, are permitted judicially to take cognizance of such offences, are the zillah magistrate and his assistant, his darogahs, with the exception of petty thefts, not being allowed by a late enactment of Police even to receive any charges of that nature, the complainants or prosecutors being expressly required to prefer them direct to the magistrate. This inadequacy of the means for checking these offences against the peace and order of the community, and the consequent impediments in the way of obtaining redress of the injuries which they involve, go in effect nearly to tolerate the unrestrained commission of them.

150. We would ask what would be the state of public manners in our own country, if instead of having in almost every parish a magistrate at hand to prevent and punish misdemeanors of the above description, and with little other public business to command his attention,

tention, there were but two public functionaries in each county, who could interfere in such cases, and those functionaries at the same time oppressed with such a weight of other business as to be obliged to keep the prosecutor and his witnesses for months in attendance before the complaint could be heard and decided.

151. This, as applied to the Bengal provinces, is no exaggerated representation of the state of things in this particular. It must be evident under such circumstances, that, misdemeanors innumerable, in the nature of private wrongs, and affecting the good order of society, must be daily practised, which are either quietly submitted to by the injured party, or the courts are borne down with complaints, a great part of which are instituted for any other purpose than for the satisfaction of a grievance sustained.

152. It is indeed impossible for us to read your judicial proceedings, and not feel a most sensible concern at the perverted uses to which the court of the zillah magistrate is applied, by designing and evil-disposed individuals, who have it in their power to appear in it, as prosecutors. We have in our judicial dispatch of the 12th October 1814, adverted to the facts stated in a letter now lying before us from the acting judge of the division of Dacca to the Nizamut Adawlut, dated 24th July 1811, viz. that of the number of prosecutions decided by the magistrate of Chittagong, from the 1st October to the 28th February, amounting to 440, 391 (in which number there were 932 witnesses) were not substantiated.

153. This matter was particularly brought under notice by Mr. Blunt, the Superintendant of the Police in the lower provinces, in his letter to Mr. Secretary Dowdeswell, dated the 1st March 1812.

154. By Regulation IX. of 1807, prosecutors were allowed, in cases where they were unable to attend the court in person, to tender their complaints through an authorized agent, corroborated by the deposition of one or more persons, present or otherwise, personally informed of the truth of the complaint.

155. This enactment was evidently framed to relieve the prosecutors from a very considerable inconvenience. The effects which have attended it are thus described by Mr. Blunt:—

156. "In consequence of this practice, the Foujdarry courts are not only frequented by individuals who subsist by conducting such prosecutions on the part of others, but even a certain number of the Native pleaders of the civil courts are permitted and appointed to attend the Foujdarry court for that purpose. In consequence of this practice, I have found in one district (and the same evil prevails to a serious extent in many others) that during the period of six months, the number of 1200 complaints of misdemeanors, or of the most trivial offences, have been preferred to the Foujdarry court, through the medium of these vakeels, or agents. The complainants having sworn to the truth of their complaints, are permitted to execute a vakulutnamah, or written authority to another person, to prosecute the charge, and return to their homes. I may venture to affirm from the records I have inspected, that of those 1200 complaints, more than one half have been utterly without foundation, and preferred merely with a view to harass and distress the parties complained against, and the persons named as witnesses, and I do not believe that in the whole 1200, the number of 100 has ever been prosecuted in person by the complainants, to a conclusion, and the charge established. The number of persons who have been forced from their homes and families, either as dependants or as witnesses in these complaints, there is reason to believe, considerably exceeds 6000. (From his subsequent letter of the 13th March, it appears he had ascertained the number to be near 10,000), many of these persons (he adds) had been brought from the most distant parts of the district, and had probably left their lands untilled, their crops ungathered, or their families unprotected or unprovided with the means of subsistence, in their absence." He further states, that on the arrival of these persons at the station, where they are unfriended and unknown, they must fee the vakeels, or subordinate officers of the court, to induce them to become sureties for their appearance, otherwise they are detained in attendance at the station, until they are reduced to the utmost distress, and their families are exposed to the greatest extremities; and that when at length the cause is heard (which, from the number of cases pending, is not probably till after a lapse of some months), the complaint is probably found to be entirely false and malicious, and the complainant has disappeared from the time that he filed his complaint, and executed his vakulutnamah. Thus he escapes unpunished, and the court is rendered the instrument of oppression, and subservient to the gratification of the passions and resentments of individuals."

157. We collect from Mr. Blunt's letter, that in the city of Moorshedabad alone, there were no less than 3,000 causes undecided in the criminal courts, which, from circumstances stated by him, he concluded were mostly misdemeanors or trivial offences.

158. We find that a Regulation has been subsequently passed, declaredly for the purpose of restraining prosecutions of the above description, as having been "ordinarily found to prove unfounded." By this Regulation the complainant is required to deposit in the hands of the nazir of the court, at the Sudder station, a sum equal to the maintenance of his witnesses for one whole month, before his complaint can be entered on the record, and to continue to make such advances at the expiration of every month for the ensuing one, as long as his witnesses are detained in attendance on the magistrate. Before however any process can be issued in such a case, the magistrate is required to examine the prosecutor as to the specific facts, and if he sees grounds to distrust the truth of the charge, must summon the witnesses, or as many of them as he may judge proper, for their examination as to their knowledge of facts and circumstances, the witnesses being maintained also by the complainant during this preliminary enquiry, upon the result of which, it depends, whether the prosecution shall be admitted or not. It is further provided by the same Regulation, that complainants shall conduct their own causes in person, unless for substantial reasons, shewn

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to the satisfaction of the magistrate. These provisions are certainly calculated to discourage the institution of vexatious and unfounded charges; but they operate also to discourage the bringing forward all charges of misdemeanors and petty offences, whether they be true or false.

159. What we have here stated in regard to "calumny, abusive language, slight trespasses and inconsiderable assaults, hold equally good with regard to adultery, fornication and rape," which are judicially cognizable in the Fouzdarry department. The prosecutors in such cases are subject to the same impediments, the same heavy expences, and the same delays, before justice can be obtained. Here again we recognize a state of things which cannot fail to have an injurious effect upon public morals; and which, we think, serves to illustrate the statement of Mr. WELLAND, in his circuit report for the division of Bareilly, dated 21st October 1805, in which, after noticing the inattention shewn to the laws and rites of marriage, he thus expresses himself: "no care is paid by the legislature to enforce those laws, or to promote and encourage the object of them. Hence the loose connections which are formed between the sexes, and which give rise to direful enmities, attended with homicide and other criminal offences, and which occasion unhappiness principally among the inferior gradations of society."

160. The only effectual way of affording redress for such acts, and of restraining the perpetration of them, as well as of discouraging and preventing false and unjustifiable prosecutions in cases of that sort, is by the introduction of a much more numerous and extensive agency than now exists for the trial of such offences, or than can be furnished from the European line of our service. To our Native subjects we must look for the supply of the deficiency so severely felt. We have long employed them in the administration of civil justice in its minor concerns; and the reasons are equally cogent why we should in the same manner avail ourselves of their instrumentality in the affairs of criminal judicature. The reasons in both cases are founded *in the necessity of things* in a foreign dominion like India; but we must, while we rest the principle on that foundation, at the same time express our conviction that, abstracted from this view of the subject, there are considerations of general policy, which would strongly recommend a liberal admixture of Native with European authority in the magisterial department of Police, as in other departments of civil administration.

161. We therefore wish you to consider in what manner this can most unexceptionably be accomplished; and particularly whether the Native commissioners of a superior order, which we have proposed to establish for the administration of civil justice, might not also be authorized and required to act in the former capacity.

162. We have in the foregoing part of this dispatch recommended that encouragement should be given to the settlement of disputes or complaints, respecting caste and moral discipline in the accustomed modes which have prevailed in the country; that is, through the spiritual heads of tribes. Questions of marriage, adultery, fornication, and perhaps rape, would properly fall within their cognizance.

163. In carrying into effect the instructions with which we have furnished you for the modification and enlargement of the present system of civil judicature and Police, or any of the suggestions we have thrown out for your consideration relating to the same subject, we by no means intend that measures of a general nature extending to the whole country should at once be adopted for that purpose. Our wish is, that this important business should in the first instance, be entered upon and completed in such zillahs only, as from local considerations it shall be deemed most advisable to proceed upon: and that the execution of this duty, which it must require much practical knowledge, judgment, zeal and ability satisfactorily to discharge, should be confided to those of our servants who are best qualified for the undertaking.

CRIMINAL JUSTICE.

164. There is no branch of judicial administration in which promptitude of decision is more necessary, than that which is now under our consideration; and yet none in which the want of it is more felt. The length of time which elapses between the apprehension of an offender and his trial before the circuit judge, is an evil of very considerable magnitude, which it is of primary importance to remove as far as practicable. It operates not only with great injustice on the persons accused, but is attended with various other consequences highly prejudicial to the morals of the people, and to the due administration of justice, by the opportunities which it affords for imposing on the courts by fabricated defences and perjured testimony. The inconvenience to witnesses is also necessarily very considerable; but it is rendered still more serious, by the necessity which they are under of twice attending at the Sudder station; first, on the previous examination before the magistrate; and secondly, at the time when the circuit court assembles; nor can we overlook the heavy expenditure which falls upon the government, for the maintenance of witnesses occasioned by this circumstance alone.

165. These evils and inconveniences, as they concern both the people and the state, have been repeatedly represented by our judicial servants under your presidency, as pressingly to require some remedy.

166. They have also been brought under notice by the select committee of the House of Commons on East India affairs, in their 5th report.

167. The most effectual means that could, in our opinion, be applied towards remedying this serious grievance, would be by transferring, as we have proposed in a former part of this dispatch, the charge and administration of the Police to the collector, with authority to decide on crimes, such as are at present entrusted to the zillah judge, in his capacity of magistrate, and by vesting the zillah judge with a criminal jurisdiction in cases of greater magnitude, but not of a capital nature which might be brought before him on the commitments of the collector in his magisterial character. In the exercise of such powers, the zillah judge might be aided by the moolavi and pundit of his court, and he ought invariably to proceed to the trial of the offence

offence immediately on the commitment. In cases of a certain magnitude the sentence might undergo the revision of the court of circuit, as it now is, under similar circumstances with regard to the sentences of the latter court, which are subject to the revision of the Nizamut Adawlut. The relief which the zillah judge would derive from the abridgment of his labours in the administration of civil justice, and by withdrawing from his department the charge of the Police under the arrangement pointed out in the first head of this despatch, would, in our opinion, allow him time to afford efficient aid to the courts of circuit in the manner suggested, while those courts also independent of that aid, would, by the reduction of the business before them, consequent upon those arrangements, (involving as they do, a limitation of appeals from the zillah courts) have it in their power to render the administration of criminal justice in its higher department, not only more prompt, but at the same time, enable them to acquit themselves of this more important duty with far more care and circumspection than it is possible for them to do, under existing circumstances; and this too, with a diminished number of judges.

168. At the principal cities it may be necessary, as it was in the year 1787, to continue the functions of judge and magistrate in the same person, but with the same extended power as is proposed to be given to the zillah judges.

169. By a distribution of powers and authorities for the trial of public offences and crimes, on the principle we have here recommended, and by vesting a power in the Natives to try some of the more petty misdemeanors, the witnesses in criminal prosecutions would be greatly relieved from that most severe inconvenience of giving two separate attendances at the judicial station.

170. The principle of enlarging the powers of the zillah magistrate has very often been enforced by the judges on your establishment, and appears to have been particularly so, by the acting judge of circuit for the division of Calcutta, on the first sessions of 1804, (a period when the necessity for the adoption of that principle was not so great, as it now is, or at least, not so greatly felt:) amongst other valuable observations on this subject, he remarks, that "another important "advantage, which would be derived from empowering the magistrates to try persons, charged "with the lesser offences, for which they are amenable to the courts of circuit, is, that the proceedings would be more accurate and satisfactory, and the conviction of offenders more certain "than they are at present. That the delay of four or five months, which generally happens before the courts of circuit take up the commitments of the magistrates, increases the difficulty "ten-fold, and often baffles the most laborious researches."

171. He adds, "the trouble and inconvenience to individuals, and the expense to government," (and a most serious one we find it) "from obliging prosecutors and witnesses to come twice from "all parts of the district to give their evidence at the Sudder station, in all criminal trials now "subject to the cognizance of the courts of circuit, are certainly subordinate considerations; but "they ought to have some weight, if the great objects of certainty in judicial enquiries and of "public example, should be equally attainable by requiring their attendance only once."

172. In the preceding year, we find the senior judge of the court for the division of Moorshedabad, bringing under the notice of the Nizamut Adawlut, the distress endured by witnesses waiting in attendance upon his court. After stating that there were near 500 attached to the calendar (a number we must observe, by no means uncommonly large at the present day, and often much exceeded) he proceeds to observe, "these are mostly people of the lower order, cultivators of the soil, who sustain great injury by being dragged from their homes, and suffering long "detention at the periods of harvest or season of cultivation; a detriment by no means compensated by the allowance of subsistence, which they receive from government, whose expenditure "on that account is nevertheless greatly enhanced by the system now pursued; and the clamours "of indigent prosecutors and witnesses which assailed me daily on the opening and closing of the "court, have had considerable effect to prompt this representation."

173. In the letter of Mr. E. Watson, acting judge of circuit for the Calcutta division, dated 11th September 1810, to the magistrate of the 24-Pergunnahs, he observes on the subject of what are called thannah confessions, that "it would be endless entering into a detail "of the different modes in which confessions are fabricated and proved: that the usual "course appears to be, first, to apprehend as many people as caprice may dictate, and "then to select from the number those individuals who are to confess, and determine "on the purport of their confessions:—that the prisoners are taken out singly at night, and subjected to every species of maltreatment, till they consent to subscribe before witnesses to the "contents of a confession, drawn up for their signature by the buckshee, or to learn it by heart, "and repeat it in their presence; and that a darogah, who is sure of his post, will, with the "utmost impudence, send in a confession, witnessed only by a few pikes, or other Police dependants, who were perhaps the very instruments by whose means it was extorted."

174. In every case of decoity, which came before Mr. Watson, at the sessions to which his letter relates, the proof rested on a written mofussil-confession, given in evidence on the trial; and all those confessions bore, he says, the marks of fabrication. We are much satisfied with the orders that were issued by Mr. Watson, for the prevention of the atrocious offence to which we have referred. The checks and restrictions provided for in those instructions, in order to render the frauds more difficult of execution, and more easy to detect, are very judicious; and, if duly observed, must at least circumscribe the abuse. The evil, however, we fear, will continue to prevail, until the inhabitants be brought to co-operate for the preservation of the public security.

175. The number of prisoners confined for want of security under the discretion of the magistrates, is a matter that also forms a prominent feature of Mr. Watson's letter, and, from what is stated by this judge, as well as by Mr. Welland, the acting judge of circuit for the division of Dacca, in a letter to Mr. Secretary Dowdeswell, dated the 22d July, 1811, we are led to entertain very considerable doubts whether this discretionary authority has not been exercised without that

care

care and circumspection which are so necessary to prevent its becoming an engine of oppression and injustice. That its exercise has been attended with these effects, in some parts of the country, appears from the letter of Mr. WATSON, in which he states, that having, under the powers vested in him by Regulation IX. of 1807, inspected the proceedings of the magistrate of the 24-Pergunnahs, in the cases of all the persons in confinement, under requisition of security for good behaviour, he found that many of these people had been confined for two years and upwards, on insufficient grounds; among which number were persons doomed to the ignominy of a jail, "without any enquiry whatever having been made into their general character, or whose characters, habits and means of livelihood had been found, on enquiry, to be good or unexceptionable, merely because their names were thrust into thannah-confessions. Others he found in jail, under requisition for security, not for their good behaviour, but simply (as the judge states it,) for their appearance, chiefly on the ground of their having been named in mofussil confessions."

Criml. Consn. 6th August 1811, No. 3: Para. 9.

176. We are informed by Mr. WELLAND, that at Backergunge, numerous prisoners were retained in confinement two and three years, for want of security for their future conduct; on which subject he appears to have made a representation to the Nizamut Adawlut; and that of 102 prisoners imprisoned on the same account, "many had been continued ten and twelve years, and some even for crimes, the punishment for which, on a full conviction, would have fallen short of the period during which they had been continued in confinement, merely on account of the suspicion attaching to them." He further states, that "several prisoners" under confinement on this account, have been known to declare that they would "sooner suffer any defined sentence, whether from a magistrate, or any of the superior courts, by which their punishment of imprisonment should be at once declared, even for a specified period of five or seven years, than to be liable to this uncertain award."

177. We are naturally anxious, with these facts before us, that the undue and inconsiderate use of a power, of the above description, be guarded against, as far as practicable. The discreet and sober exercise of it, should be pointedly enforced upon the magistrates; and it should be considered by the circuit judges, a primary object of their duty, at every gaol delivery, to require from the magistrates, agreeably to the provisions of Regulation LIII. of 1803, a report of all persons who shall have remained in confinement for a year, under inability to give the security required,—and in whose instances the magistrates may, with reference to their behaviour during confinement, deem the execution of a muchelka, or penal engagement, sufficient to admit of their release without security. It will then remain for the judge of circuit to exercise his judgment upon the cases brought before him in the manner directed by the above-mentioned Regulation.

Letter to Register of Nizamut Adawlut of 23d January 1811.

178. We must here notice a practice, observed by Mr. BUTTERWORTH BAYLEY, the judge and magistrate of Burdwan, with regard to the release of prisoners, which we cannot too highly commend. On the liberation of any person, after the expiration of a period of imprisonment, or on the discharge of any other person, whose conduct though suspicious, is not of that desperate character which would render his confinement absolutely essential to the public safety, he is sent to his village and given over in charge to the gomostah, mundels and chokedars, who are enjoined to afford him every means and opportunity of procuring an honest maintenance; but at the same time not to allow him to absent himself from his village at night, without giving notice of his intention, and in the event of his associating with persons of bad reputation, his ceasing to labour, or to obtain a livelihood by creditable means, they are responsible for giving due information of the circumstance to the thannah.

179. The operation of this plan, as is justly remarked by Mr. BAYLEY, "diminishes the heavy expense to which government would otherwise be exposed, by supporting in jail an immense number of persons of dubious character. It gives them an opportunity of maintaining themselves and families by honest industry, while their labour adds to the prosperity of the country. It prevents them from becoming hardened rogues by the contamination of a jail, while at the same time the magistrate has the best practicable security for their conduct being observed, and their persons being secured, whenever circumstances may render their apprehension necessary."

180. It constitutes one of the many advantages of an efficient village Police, such as we have the satisfaction to find established in Burdwan, through the meritorious exertions of Mr. BAYLEY, that it furnishes the means of giving effect to the excellent plan to which we have adverted; and we look forward with the expectation of seeing it extended to the other zillahs under your government, as you are enabled to bring into action the authorities of the villages in aid of the general Police of the country.

181. We have already in our judicial despatch of a former date, and also in our despatch in the same department of 30th September 1814, para. 6 to 12, expressed to you our general sentiments on the employment of goindahs; with reference to this subject we must here particularly refer to the letter from Mr. B. BAYLEY, to which we have just alluded; from which we find that through the aid he derived from the village officers, in obtaining information of public offenders, and by an active and energetic controul over the conduct of his immediate servants engaged in their apprehension, he had not found it necessary for some time to employ a goindah in the district, though he had been little more than a year in the charge of the Police of Burdwan.

182. We are satisfied that a good system of village Police, superintended by an active and zealous magistrate, would render it very rarely, if ever, necessary to resort to an agency of so equivocal a character.

183. In the foregoing instructions, our intention is to furnish an outline merely of the provisions which we think it expedient to make, for the more speedy and effectual administration of criminal justice, leaving it to yourselves to fill up that outline with such rules as you may deem requisite; desiring only that they may be as few and as simple as the case will admit of. We also desire that an enquiry should be instituted into the existing regulations and forms, in both the

the departments of Police and criminal justice, with a view to the revision of the same, so as to combine, as far as may be possible, the expeditious and effectual despatch of business with regularity and correctness of proceeding. This enquiry will naturally connect itself with the examination of a similar kind to be made into the forms of process observed in the zillah courts and the courts of appeal.

184. We direct also, that in pursuing these investigations, which are of a general and comprehensive character, and which we doubt not, will be conducted in a correspondent mode and spirit, that you at the same time direct your attention to the form of protestation which witnesses are required to observe, in giving evidence in our courts of judicature. It is a matter which has frequently attracted our attention, in consequence of what has been thrown out by some of our judicial servants upon the subject, and particularly by Mr. EDWARD STRACHEY in his report, while acting judge of the division of Calcutta, dated the 1st September 1807, in which he observes, that "such is the terror of the oath, that no respectable person will appear in our courts, as a "witness, if he can help it; and that his own little experience enabled him to say, that it was "common for families, sometimes whole villages, to flee at the apprehension of being named as "witnesses," and that "the people at large do certainly consider the taking of an oath by the "Ganges water to be a spiritual offence of the most horrid nature:" he adds, "if the corporal "oath in the form now used, tend to banish truth from our courts, and if it be liable to the objec-"tions I have stated, I know no reason why it should not be abolished altogether."

185. We wish you to ascertain how far this essential consideration is attended to by our judicial officers; and if the Regulations of your code of justice should be defective or erroneous in this respect, the requisite amendments should be made therein, so as that the testimony of those cited before our regular tribunals, of whatever gradation, should be given in that mode, most consentaneous with their ideas and prejudices, as well as most likely to be binding upon their consciences.

We are,

Your affectionate Friends,

(Signed) W. F. ELPHINSTONE,
JOHN INGLIS,
R. C. PLOWDEN,
G. A. ROBINSON,
JOHN MORRIS,
S. DAVIS,
H. LINDSAY,
J. B. TAYLOR,
DAVID SCOTT,
S. TOONE,
A. ALLAN,
JAMES PATTISON,
J. A. BANNERMAN,
C. MARJORIBANKS,
JOHN JACKSON,
J. HUDLESTON,
ROBERT CLERK.

LONDON,
9TH NOVEMBER, 1814.

BENGAL SECRETARIAT LIBRARY

MINUTE

BY THE RIGHT HONORABLE THE GOVERNOR GENERAL ON THE JUDICIAL ADMINISTRATION OF THE PRESIDENCY OF FORT WILLIAM, DATED THE 2ND OCTOBER 1815.

1. I HAVE now the pleasure to lay before your Honorable Board, the several reports submitted to me, under the orders of the 22d April 1814, by the judicial officers whose districts I visited, during my tour thro' the Upper provinces, together with those I subsequently called for.

Provincial Courts for the divisions of Moorshedabad, Patna,—Benares Judges and magistrates of Burdwan, Hooghly, Nuddea, Moorshedabad city, Bhaugl-pore, Behar, Patna city, Tirhoot, Shahabad, Sarun, Gazeepore Benares city, Mirzapore, Juanpore, Gorucknore, Allahabad, Bundlecund, Etawah, Futruckabad, Bareilly Agra, Moradabad, Cawnpore, Allyghur, S. Seharunpore, N. Seharunpore Resident at Dehli.

2. These reports consequently include the whole of the two provincial divisions of Bareilly and Benares; for as in these I was desirous of completing the series, I was induced to require reports from those magistrates, through whose districts I did not happen to pass.

3. In the Behar division, the report of the judge and magistrate of Ramgurh only is wanting. Of Bengal, there are only the reports of those districts through which my route by water immediately lay, and as my enquiries have been more particularly directed to the remoter divisions of our territory, I have not thought it necessary to call upon any other officers of the Lower Provinces.

4. In submitting these reports for the consideration of your Honorable Board, there are some points on which I have felt desirous of offering a few observations, but I am very far from doing so with any confidence in the correctness of the results I have drawn, or of the notions I

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at present entertain, on the contrary, it is rather with the object of paving the way for future deliberation, that I have been induced to lay my sentiments before you, and I must intreat you not to regard them as my fixed and decided opinions, but rather in the light of incidental observations, suggested in the progress of enquiry, and open to be either confirmed or removed, by more full consideration and discussion.

5. It is due, indeed, to the high importance of the several subjects embraced in a review of the judicial points which have on this occasion been brought under my notice, that I should guard myself most carefully against the danger of relying too much on my first impressions, and that I should not form my opinions merely on the reports of one particular class of officers, but hold myself free to give as willing consideration to what may be suggested by other equally able and perhaps more impartial authorities. This however is yet more incumbent on me at the present moment, when the attention of this Government has been so pointedly roused by the late dispatches of the Honorable the Court of Directors, to the review of the existing judicial institutions; and when we must shortly have to decide upon questions of uncommon magnitude arising out of them; perhaps to legislate and lay down principles not only affecting the interests of our subjects at this Presidency, but providing for the whole interior government, and future administration of every part of our possessions.

6. Your Honorable Board will be aware, that I here allude to the several dispatches of the Honorable the Court of Directors, in the Judicial Department, addressed both to this Government and to the Government of Madras, the full consideration of all the points connected with which was reserved until my return to the Presidency, might afford the means of personal and unreserved communication with your Board, and until the several authorities in whose opinion Government has been accustomed to entertain confidence, could be consulted on the subject.

7. Under such circumstances, your Honorable Board must be sensible of my anxiety to avoid anticipating the result of this impending discussion, and will feel disposed to give to my suggestions only that degree

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of weight, to which in the present state of our enquiries they may pretend, after due advertence to the imperfect information and the incompleteness of the grounds on which they have been formed.

8. Although the reports now laid before your Honorable Board, together with the discussion of the leading principles of our judicial system, and the exposition of matters of general interest, contain many very useful suggestions of more limited application, I have judged it right, in the view I have here taken of them, to confine myself for the most part to the former portion of their contents, reserving for separate consideration, any local subjects the reports may contain.

9. The consideration of all general questions of a judicial nature, must naturally divide itself into the three several heads of police, criminal justice, and civil judicature. Should any further observations, unconnected with either of these subjects, suggest themselves as necessary, they will be introduced under the separate head of miscellaneous matter.

10. Upon the subject of police, the most important question which presses forward for our consideration is, whether or not the existing system has accomplished the objects contemplated in its formation. On this point, the reports necessarily afford but little direct reasoning or information, from which to form a correct judgment. They are the reports of officers educated under the existing system, and but very few of them have had the opportunity of comparing its effects with those of any other. Their notions on the subject of it must therefore be received with all the caution which the known bias of ministerial officers in favor of the system they have long administered, is calculated to inspire; the judgment of Government must rather be guided by a reference to the views and circumstances, under which the system was originally adopted, and by enquiring after facts, the result of actual observation, whence a correct notion of its operation on the country may be formed.

11. It may be conducive to perspicuity, that I should premise a brief explanation of the nature of the existing system.

12. The police establishment of every zillah (or magistrate's jurisdiction) may be stated to consist of a darogah, with from 10 to 50 burkundauses for every thanna or division of country, varying from 100 to 300 square miles. In cities, the extent of jurisdiction was regulated with reference to the population. But every where, these thannahs with the magistrates office, formed the stipendiary police establishments introduced by our Government in 1792, and maintained to the present day without any alteration in principle, and with only a late subsidiary addition, to which I shall hereafter have occasion to advert.

13. On the general authority and constitution of the darogah's office little need be said, but that he was invested with the full control of the police of his jurisdiction, under the orders of the magistrate, and all existing village institutions of watch or patrol, were subjected to his authority.

14. The expense incurred in these numerous establishments was undoubtedly extremely heavy, but there is reason to believe that the state of the country at the time, was such as to throw considerations of expense out of the scale, so as the object of securing the peace of the interior could be any way accomplished. Government had already tried in vain, every other mode that had suggested itself, the large independant jurisdictions of native magistrates or faujdars, tho' acting under the eye of our own revenue officers, had completely failed. The substitution of European magistrates, with a general responsibility in the land-holders, who were to act under their authority, had produced no amendment in the police of the country. For, notwithstanding the union of the authority of magistrate with the whole revenue and civil jurisdictions, there was still experienced a want of power to enforce the magistrate's orders on the land-holders, and to secure for him access to the requisite sources of information.

15. It only remained therefore, for Government at the time, to devise such an institution as might afford the means of a more active and efficacious control, and as experience had shewn that the land-holders were not to be trusted with the exclusive management of the police of their

their own estates, nothing was left but to supply their place by appointing separate officers to be set over them and imposed upon the country. It was in this view, that the thanadaree institution was introduced in Bengal, and although I am aware there is good reason to believe, that the wretched state of the country at the time was as much owing to the defective and inefficient condition of the criminal courts, as it was the fault of those entrusted with the administration of the police ; still I at present see no reason to doubt, that the thanadaree or some such stipendiary establishment, was at the moment indispensible—an operative mechanism of that sort, was required to give weight to the authority of government and of its officers, as well as to reduce the spirit of violence and lawless rapine which seemed then to prevail under the collusive, if not overt support, of the land-holders and farmers in every district.

16. Whether the institution thus introduced was calculated to effect this object, and whether it has proved successful, as well as whether the necessity of it's permanent maintenance still exists, are points which we have now to determine. If it be supposed to have been one of the objects in the contemplation of the Government from the formation of these establishments, to have furnished a force adequate to the protection of the community, and capable of undertaking the prevention of crime by its own vigilance—In this respect the institution must be admitted to have failed. The hired force of a thana is totally insufficient for such purposes. Even in its collective strength, it could scarcely venture to resist or pursue a gang of armed robbers, and it is numerically inadequate to give individual protection against common theft and burglary beyond its own immediate station.

17. But it may safely be asserted that no Government ever did, or ever can defray the whole expense of a preventive police, to this extent ; much gratuitous aid, direct or indirect, is afforded in every country. A preventive police must depend not only on the skill and vigilance as well as promptitude with which the stipendiary force of the state is directed, but also on the energy of individuals in their respective stations of life. The hired arm of the police must necessarily be limited both in its extent and effect. Its principal support mus come

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from society itself: and the opportunity should not be missed of observing that hitherto in this country, it has had no such aid.

18. I can however discover no sufficient reason to presume, that protection or prevention by the supplying an adequate guard was an object in the introduction of the thanadary system. It appears to me to have been devised exclusively with the view of strengthening the arm of the magistrate, and of introducing an efficient control over the police of the interior, by which that duty was to be performed: the land-holders had hitherto been entrusted with this control, and undoubtedly if an individual estate could be regarded abstractedly from its connection with any other, the propriety of leaving the care of the Peace to those whose station gave them influence, and whose interest would ensure a due attention to its preservation, would be a different question, and might perhaps be advisable. But every estate is surrounded by others, and this contiguity gives rise to jealousies and conflicting interests, which unless there is a strong and vigilant control to keep them down, must soon engender a confusion, sufficient to baffle every unsupported effort of a magistrate to unravel.

19. The land-lord of wealth and influence, requires no authority from Government, to enable him to protect himself and to prevent if willing, the commission of dakoity by his own tenantry. He might even be expected to exert himself to restrain them generally from preying on each other. In these respects therefore, nothing perhaps would either be lost or gained by investing him with special powers: but while we could have no security that the delegation of such authority to the zemindar would induce a greater activity, in preventing his tenantry from plundering the inhabitants of neighbouring estates, we might confidently anticipate the frequent misapplication of it to purposes of private revenge. There can be little doubt, that under the system which left to the land-holders the management of their own police, it's powers had been almost universally perverted in this manner. On that account, the thanadary system was devised. It was the object of that system to disarm them of those powers and to vest the control in the hands of stipendiary officers of Government, free

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from all those passions and feelings, which had bred the confusion; but it was only the controlling portion of the former system which was then supplanted. The former village institutions of watch and patrol were left untouched, save that they were made subservient to the thanadars, and a portion of their support commuted from land into money payment. It was to these therefore that the community was still to look for its immediate protection, and our government only undertook to see, that they did their duty in that respect. The question of the success or failure of the thanadary system, resolves itself therefore into the following points. Has it broken that spirit of violence and disposition to take the law into their own hands, which existed on its introduction in every class, possessing influence throughout the country, and has it established a more effectual control, or otherwise improved the previous institutions for the protection of the community.

20. A reference to the present state of all the Bengal zillahs will, perhaps, satisfactorily answer the first question. Chicanery and litigiousness appear almost universally, to have taken the place of violence, and though the state of the Nuddea and some other districts at so late a period, after the introduction of this system as even the year 1808, might then have almost justified a conclusion that it had altogether failed; still these disorders may be traced to other causes than defects in the system, and the present improved state of those districts effected merely by the means and agency the plan yielded, combined with the previous general amelioration of the state of other districts, affords satisfactory proof of the degree in which the system has been efficacious, and shows that it was originally well calculated to effect the object, for which it was principally devised. I must confess that I consider it one of the main springs of the present strength of our Government, and one of the chief causes why insurrection has been so totally unknown, notwithstanding the frequent recourse that has been had to many very unpopular measures. In the several districts of Bengal, military aid is at present hardly ever called for to support the civil power, and as far as I have yet been able to observe, I really believe, that this is greatly owing to the effects of the thanadarry system.

21. Though therefore it may be objected to this system, that it was a sudden and violent innovation on all existing institutions, instead of a cautious and gradual improvement of them, I cannot but believe, that such an innovation was necessary to the support of our Government with which, as it did not arise out of the society, the institutions of the society could hardly have been amalgamated. I should accordingly feel inclined, strongly to recommend its maintenance, in preference to any other that has been yet suggested, not only in Bengal but in the Western Provinces also. In these indeed I conceive the system to be yet more necessary in order to give effect to the Magistrate's authority, to render the power of our Government active and omnipresent, and to wean the population from those habits and notions, prejudicial to the peace and well-being of society, which they had imbibed under the weakness of former rulers. In all native Governments, the frequent detachment of a Military force to every quarter of their territory, is indispensible to keep the country in subjection and annually to collect its revenues. Our Government experienced at first the same necessity, until the introduction of this system, but from that moment the calls for Military aid to enforce obedience to the laws, have been gradually diminishing. The Thannadar and his establishment are always perfectly informed of every thing that is passing, are at hand to interpose every where the authority of Government, and to bring it's powers immediately before the eyes of the discontented or disaffected, before a systematic opposition can be organized: and though he can effect little or nothing by direct force, still the certainty that the support behind him is unlimited in extent, must always ensure to a Thanadar respect and obedience as long as he keeps within the line of his duty. The control too of the Magistrate is ever ready to confine him to this, and to punish any abuse of power; nor is there any thing to restrain the community from bringing such transgressions to his notice, whenever cases may occur. As far therefore as it was desirable to destroy the spirit of violence which subsisted, so far has the Thanadary system been productive of essential benefit to the country, and from what I have yet observed, this object has been effected with as little harshness or injury to the community as was possible. Its efficiency, however has been found to extend beyond the immediate enforcement of the authority of Government. It is fully equal to the effectual performance

formance of all the duties of Police which follow the actual perpetration of a crime. In it's investigation and in the apprehension of the offenders, it must be acknowledged where the Magistrate's control is able and active, to fall very little short of the best organized systems of Europe. To whatever duties indeed a Stipendiary Police has in any Country been found equal, it may safely be asserted that the Thanadarry system will not have failed in their performance. It's officers have every incitement to activity which exists in similar establishments elsewhere, while the checks against supineness are perhaps superior; the same exclusive notions of profession prevail among them, and they have all, the most thorough conviction that their continuance in office and means of livelihood, depend upon the satisfaction they may give to their superiors in the discharge of the duties entrusted to them.

22. As far indeed as my observation has yet gone, I have seen reason to be perfectly satisfied with the efficiency of the Thanadaree system in itself. It remains to be enquired, what effect it has had upon the existing Police institutions of the Country, and upon the community at large.

23. I have before stated, that it was a feature of the Thanadaree System, that the native Village Institutions were placed under it's immediate control—the first question therefore is, has this control produced amongst these institutions, a greater degree of vigilance and activity.

24. It appears to be a general Complaint amongst the Magistrates both of the upper and lower Provinces, that the village establishments furnish at present even, an inefficent class of Officers, and they trace this inefficiency to the double capacity in which those Individuals serve. That complex Character involves a Subordinary to two authorities; to the established Police in matters of that description, and to the Zemindar or his local representative in matters of Revenue. The Magistrates complain, that as they cannot obtain the cordial co-operation of the Zemindar, they have but little command over the Village Police, the Officers of which necessarily look up more directly to the person who pays them, than to the Government or it's Officers, from whom they receive no wages.

25. If the Magistrates ever expected to have the same authority over the village as over the Stipendiary Police; if they thought that the Zemindars would from public spirit, co-operate with them in establishing such an authority over the village institutions, I must confess that I think they expected too much, more even than it was natural from the constitution of the System, they should have.

26. It would have been unreasonable to look from the Land holders for a cordial disposition to further a System, the immediate effect of which was to supplant their own Police authority. They would naturally regard it as a sudden and violent innovation, to the prejudice of their rights and consequence in Society, and must necessarily have felt a jealousy towards it's Officers, which would give birth to at least a supine indifference, if not an active disposition to counteract their efforts for the improvement of the Police.

27. In this view, there is wisdom in the provisions of the legislative enactments of 1792 and 1793, which in depriving the Land holders of any Police authority, required from them only a negative conduct, leaving them to wear off their jealousy in neutral inactivity, and trusting to the gradually increasing influence of the Judicial Officers for securing a more effective, because more willing co-operation than a legislative enactment would obtain. I am indeed not quite satisfied of the expediency of several attempts which have been subsequently made to coerce this co-operation, for I should fear such might have a tendency to exasperate the jealousy, that must in the first instance have disjoined the landed interest from the regular Police.

28. The System as originally devised, exacted no co-operation from Zemindars. It took from them the power of Police, declared it's own authority paramount over Servants hitherto exclusively theirs, and seemed to consider itself above the necessity of resorting to the aid of their influence to establish every requisite control over the mofussil Village institutions: Government indeed had in it's own hands, powerful means of controlling such institutions, nor were there any considerations to restrain the full exercise of them. The Village Police consisted of

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special officers who had a special duty to perform, for which they would be held responsible, they were to be taught that inactivity would not pass with impunity, and that collusion, or even a disposition to withhold the most active assistance from the regular Police, would infallibly entail punishment. An efficient and watchful control was set over their conduct, and the Law enabled the proper authorities to enforce it by arming them with the power of punishing neglect, even with severity.

29. It was not therefore necessary to solicit the co-operation of this class, their assistance could be secured by compulsion, and although this assistance being constrained, might be in some respects defective, yet it was apparently all that the system originally admitted of, and perhaps all that the essential objects of it required.

30. There can be little doubt that the Village Police, controlled upon these principles, has been the main engine of the success which has attended the Thanadary System in putting down great crimes. It is from its officers that all information of the character of individuals, of the haunts and intentions of robbers and of every thing necessary to forward the objects of Police, must ordinarily be obtained. They are the watch and patrol to which the community looks for its immediate protection, while their station in Society, general commuuion of caste with one another, and every circumstance of their situation, furnish the means of being useful, nor is there any thing wanting but an active Superintendence, to keep them to their duty by uniting it with their interests.

31. This has been afforded by the System as it stands—whenever a Dacoity or other heinous Crime occurs in a Village, the Darogahs duty calls him immediately to the spot, and he goes there with only a few Burkundauzes, and with no information except of the occurrence of the crime. His only mode of proceeding is to collect the watch-men of all Neighbouring Villages, and to question them as to all the circumstances, with a view to get from them that information which they only can afford. The activity of these in ascertaining and pointing out the perpetrators, is quickened by the fear of being suspected of connivance, or at least of

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being dismissed and stigmatised as inactive or incapable. Here is the control which, by the influence of the fear of punishment, ensures activity, and forces from the Village police, the most effectual aid in the performance of all those duties which follow the perpetration of a crime. But the fear of this heavy responsibility makes it as much their interest to be vigilant with a view to prevention. Whenever, indeed, this fear ceases to operate, whenever the control may become lax, the district will soon fall out of order, and the Village Chokeedars will generally be the leaders in the confusion. They can only be restrained by the certainty, that they will be the first that are called to account.

32. It was by the instrumentality of a control fashioned on these principles that the existing important benefits have been acquired for the country, in the suppression of all the most crying offences by which its peace had been so long disturbed.

33. There has yet been but little co-operation from the class of landholders; for the inert neutrality enjoined them cannot be regarded as support. Indeed, at the present day, the want of co-operation notwithstanding the many attempts subsequently made to obtain it, is matter of universal complaint.

34. If then the system of control, by fear of punishment, has shown itself equal to the accomplishment of all the most essential objects which Government had in view in introducing it, whence arises this general notion of the inefficiency of our system, as far as the native police institions which we found in being, form a part of it.

35. It arises from our having already reached that stage of improvement, beyond which it is impossible to advance, without assistance in the general concurrence of Society.

36. Hence the constant disappointment of all the efforts of our Judicial Officers to push their improvements further by the same means; A zealous and intelligent Magistrate may suppress Dekoitee, destroy or disperse gangs of robbers, however desperate and firmly rooted, in the country,

country, he may prevent affrays and every violence which materially disturbs the public peace, but if he attempt to carry his improvements farther his efforts fail, and tho' he perhaps justly attributes the failure to the inefficiency of his means, it is not so much from the want of physical strength in the establishments as because his instruments are not of a nature calculated to excite Society to a general co-operation with him.

37. Every Judicial officer appears more or less to have felt that his efforts to go beyond the point which has been reached have not proved successful. Most of them attribute the failure to the impossibility of exciting those possessing influence in Society to a cordial union of exertion with themselves for the furtherance of objects connected with the public good; but in the mode of accounting for this circumstance and in the suggestions and propositions to which their feeling has given rise, there is as might have been expected a considerable variety of opinion. Some conceive our Police establishments to be inefficient in force and number, others attribute every defect to our inability to make those who should lead the Society shake off their supineness, and indifference.—The greater number of Judicial officers indeed seem to be for extending the Magistrate's power over all the institutions of police in being; they are for substituting others; or new modelling those existing, so that they may acknowledge subordinary to no other authority but the Magistrate. Others are for re-admitting the leaders of Society to a share of the responsibility and authority of Police in order to secure the co-operation required, and some are for coercing the co-operation by penalties attached to omission without yielding any share of the power or responsibility.

38. The extension of the Chokeedaree System, or Subsidiary police lately introduced into Cities and into the Sudder Stations of Zillas, to the Villages generally, is the form in which the new Modelling of existing institutions is usually proposed.

39. The principles on which this addition to our former establishments have been devised, are simple and apparently Judicious—It is

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right that the Society should provide for it's own internal protection in minor cases beyond what can be provided for by Government, from the general resources of the State; and wherever the Society may not of itself have already devised, a plan for this purpose, Government are of course justified in coming forward to require that it should do so, as well as in pointing out the form in which the object can best be accomplished.

40. In the Cities and Sudder Zillah Stations in which alone the Chokeedare System has yet been introduced, there were found no institutions for its protection previously existing in the Society, the Government called therefore upon the Society to provide for that further and more Minute internal protection, which the General Institutions could not afford and ordered it's Members to elect from amongst themselves a certain number of managers with an establishment of watch and patrol sufficient to provide for these objects. The most equal and proper mode of defraying the expence was also suggested by Government in the Shape of a Cess upon each house varying in amount according to it's Style, the whole to be arranged and levied by the delegates of the Society. Such is the Subsidiary Police establishment to which I before alluded. It is obviously an institution which if not abused, yields the promise of great benefit to the Society; And though on it's first introduction it has been rather unpopular, as I myself witnessed in the course of my tour, it may be presumed that this dislike to it must wear off when its object is more thoroughly known and it's benefits have been longer experienced. There can be no doubt also that it's introduction so speedily after the abandonment of the house tax (which in some respects it resembles) must have very largely contributed to the prejudice against it.—On the whole therefore, I can at present see no grounds on which the propriety of this measure can be fairly questioned, and I conceive the Cities to have no right to complain against it unless they can make it appear, that the institution was not required in correction of any prevalent inconvenience.—If it be only said that the establishment is sometimes more burthensome than necessary, from the plan having been in the first instance, occasionally over—done in its execution; the argument will not affect the general grounds or propriety

propriety of the measure, and like an objection derived from occasional inequality of cess, will be removed by the gradual operation of time and of increased experience—I must confess however, that I feel an unwillingness to listen to suggestions, for the general diffusion of a System of this nature over the smaller towns and Villages; in which, or at least in the [illegible]r of which, it would have to supplant already existing Institutions. These institutions are certainly objectionable, in as much as their functionaries have at present a double duty; Serve several Masters, and are only so far subject to the Magistrates; or other Police authorities, as the fear of punishment attaching vaguely, can render them. I have my doubts, however, of the propriety of making such institutions exclusively the Servants of the Government, in the Shape of Police officers subject only to the Magistrate.

41. Constituted as the village community, usually is at present, the Chokeedars are servants of the community and as well from caste as from custom, occupy the lowest station there. Paeeks, Goraeets and Duneks are not exclusively servants of the Zemindars. Besides the trifling allowance they receive for the performance of ther duties, which are chiefly distinct from Police, they are paid for the protection they afford the society, by an almost discretionary contribution from the villagers, partly in land, partly in grain at the time of harvest, and partly in yearly or monthly presents in money from residents of a certain degree. It is the interest therefore of these functionaries to secure the good will of the community they may belong to; indeed, wherever from the laxity of the general control exercised over them, they may have taken to practices, destructive to the general peace, it will always be found that the scene of their crimes is not their own place of residence, nor will their own community have been in any way the sufferers.

42. Should however a class of officers be introduced in the place of these individuals, calling themselves public servants or Noukars of the sircar, instead of being the servants of the community, they would be masters of the latter, and an authority would be established, pregnant with the most odious tyranny.

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43. I am aware that the Chokeedaree system is constituted on the principle, that it should arise out of the society, and be subservient to it through the persons of its delegates; undoubtedly, in cities where the population is usually of a better stamp and persons have a more perfect acquaintance with the principles of our government—where those also possessing influence in society, have commonly a ready access to the magistrate, either directly or indirectly—the Chokeedaree establishments would find it impossible to assume a power beyond what might have been contemplated in their formation. The case however would be otherwise in villages at a distance from the controlling eye of the magistrate and among people debarred access to him, ignorant of the motives which guide his actions, and unable to comprehend the principles which regulate his conduct. In such communities, the Chokeedars might, with the managing committee at their head, conspire against the rest of the inhabitants, and having in their hands the management of an assessment and the legal power of enforcing it, might eventually become extortioners and oppressors.

44. I must confess I see reason to fear, that it will be impossible to devise appointments, which away from the immediate control of European officers, would still be subservient to the legitimate authority of the community. We cannot establish generally, a system of free election and representation—whatever establishment might be introduced, there must be a gradation of service to official superiors; the whole looking up only to the government as their common master, thus each subordinate authority would expect to be supported on his own representation, while the complaints of those unconnected with the whole, were listened to with suspicion and distrust.

45. In this view, I do not consider it to be desirable, that any reform of the Village institutions should be attempted with the object of making them servants of Government, and exclusively subordinate to the Magistrate. I should fear too, that in Villages at a distance from the Magistrates, even the subsidiary chokeedaree system would degenerate into one of this description, and become at least independent of the community.

nity. Indeed, I will almost go so far as to say, that I see little objection to the institutions continuing as they are, since by that means their dependance on the Society can best be secured. They have to be sure at present, as already remarked, two distinct duties and many Masters, but as the establishments are less burthensome to the community in consequence, and as in any other case you could not secure them wages sufficient to afford an independent maintenance, without a direct tax, (which they would themselves perhaps have to collect,) even this may not be without its advantages.

46. But if the Village Police institutions are to continue to serve the landholders and to perform revenue duties, as well as those of Police, the magistrate will never be able to get from them more than such constrained service as the fear of punishment might enforce; and how are any further improvements of Police or of the moral state of society to be effected? Certainly, in my opinion, not by imposing new establishments on the society with which they cannot amalgamate. As far as force can effect the object, it may be done by the system as it stands: whatever cannot be accomplished by those means of control a magistrate at present possesses, can only be done by the society, we must therefore look to obtaining its co-operation by other means than by further strengthening or rendering independent our establishments; for it is not through them that society is to be moved.

47. If it be an object with us to win the community to our interests, it must be obvious that the most simple mode in which this can be effected, is to gain over those who possess influence in society, and as far as the zemindars or landed interest are of this description so far is their co-operation most desirable, and so far they are the class we should first try to gain.

48. I have before hinted, that I entertained doubts whether the co-operation of this class was to be acquired by coercive measures. Indeed it would on general principles, argue ignorance of human nature to suppose it.—It is said, however, that the higher orders of society

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in this country, have uniformly evinced that want of public spirit and that indifference to the promotion of the general good, which has left us at present with no other instrument than coercion for working on the community, and in this view, additional penalties have been proposed, besides a further responsibility to the magistrate, still without giving to the landholders any powers of police control.—I am not an advocate for any plan of this nature; I conceive that under the existing constitution of our system, a magistrate possesses abundant power of annoyance. in so much; that where a landholder may be thought to have failed in yielding the support or co-operation required, it would be difficult to draw the line beyond which he could not be made to suffer—He is liable, both in person and property, to a considerable extent; but he is yet further liable to suffer in character and consequence, from the indignities which a magistrate has it in his power to heap upon him, without passing the limit of his authority.

49. Nothing I am satisfied would be gained by arming magistrates with further powers of infliction, or by the imposition of further legislative penalties on the class of landholders. Even the obligation to make good the value of property stolen on their estates, altho' the most moderate additional responsibility suggested, and altho' sanctioned by the former established usage of the country, appears to me obviously unjust. A zemindar held to be so answerable, would frequently be punished for an act, in which he would not be surmised to have participated, and against which no human prudence could provide; at the same time, the penalty in extent would be unlimited and undefinable, and he would receive no compensation whatever for the risk.—In short, under such a provision, there would be no possibility of proportioning the penalty to the degree of neglect, or to the means of prevention which the zemindar might possess.

50. As far indeed, as the present state of my enquiries enables me to form a judgment, I must confess myself decidedly of opinion, that nothing can be done by further coercion in any shape; nor am I disposed to admit the belief, that this is our only instrument for working on the

the native society, in order to obtain its co-operation; we must suppose that mankind are influenced in this country, by the same passions and feelings which actuate their conduct elsewhere. They are to be excited, therefore, by similar means to the pursuit of similar objects. It is not only from an abstract sense of the propriety of a given line of conduct, that men are led to its pursuit, in preference to any other. If there exist in Europe, a more general disposition to forward measures, having the general good for their object than has yet been experienced here, it may as much be attributed to the superior iuducements individuals have to actuate them to such a course in Europe, as to any radical want of virtue in the society of this country. Public spirit is in itself only a mixed, or even a secondary motive, to which individuals are led as much from a knowledge that it has its merit with the public, and yields distinction in society, as from the purely virtuous sense of duty. The love of distinction must surely exist as strongly amongst the natives of this country, as it is known to do elsewhere, aud there is no reason why it should not be made to have as much influence on their actions.

51. Only therefore, let disinterested efforts to improve the moral condition of society not be without their reward, and the spirit to afford them will not be wanting. I am indeed clearly of opinion, that if it be an object with our Government to obtain the co-operation of society, we can only do so by rendering such a course the obvious road, through which its leading members may hope to arrive at distinction, or at least to obtain some advantages gratifying to their ambition or vanity. If our system has hitherto failed in obtaining co-operation, it has only been from its not having yet been a part of it to attempt this mode of accomplishing the object.

52. Our Government has had frequent occasions to be sensible, that it has itself experienced even from the class of landholders, a disposition to afford the most active and zealous support, to submit to sacrifices, and even to risk life in its service, whenever adequate occasion has required it, and whenever the individuals have felt convinced, that such a line of conduct would not be without an acknowledgement of its merit with us.

With

With the whole power and influence of Government at command, our means of gratifying their ambition and vanity are unlimited; so that wherever such conduct has come to our notice, it has always been amply rewarded: and it is in consequence of the hope of obtaining similar flattering remunerations excited by former examples of our gratitude, that on every occasion of foreign invasion or even of alarm, there will always be found even in the race of landholders, which appears to be almost universally described as wanting in public spirit, individuals who seek to deserve well of us by their activity and voluntary exertions.

53. On such occasions, no one would think of proposing coercion as a means of exciting this spirit in our favor. But the same principles apply to the co-operation we wish to excite in smaller matters—indeed, the fear of punishment has as little influence on the minds of this class of our subjects in one case, as in the other; for in neither could the charge of having pursued a contrary course, be ever brought to the proof.

54. Since therefore, it is conceived impossible, that any efforts for the further improvement of the police and moral condition of the Society should be successful, unless the co-operation and support of the Society can be obtained, through the means of those possessing influence in it from their situation; and since we cannot hope to excite such a spirit in this class, without holding it forth to them as the means of rising to distinction in the society, and of procuring those objects so gratifying to their ambition and vanity, which our Government has the means of bestowing—It remains only to enquire, what is the nature of the means, and what the mode, in which they may be best applied to the attainment of the object.

55. From the peculiar structure of Society in this country, and the habits and notions of those who compose it, it happens, perhaps fortunately for our Government, that there is little distinction to be obtained that does not emanate from the Government or from its officers. Either direct power, or that which results from influence with those in power, are

are almost the only objects of consideration, not the offspring of caste and religious prejudice. These are obviously in every shape exclusively at our command, and with the power of pecuniary recompense, and of conferring those other marks of favor and distinction, by which vanity is gratified, form the different means we at present possess, of binding the several classes of Society to us, by the hope of reward in the acquisition of their respective objects of desire. The several methods in which these might be applied to the purpose of exciting in the society, a disposition to forward our views, and the degrees of operation they might be brought to have on every class, have never been sufficiently considered. Indeed, as far as I can see, it has been but very little an object of enquiry—Our magistrates appear scarcely sensible of the force of the engine they possess. I should wish to infuse amongst them the disposition to have more frequent recourse to it, and to endeavour to move the society to co-operate with them by its means.

56. It is quite unnecessary, that the name or influence of Government should be brought immediately into operation on the society in cases of such trivial moment, as those by which the amendments of our police could be effected must necessarily be; were Government to confer a khilat or even to address its thanks direct to every zemindar who might show activity in aid of the police, whenever a theft might occur, it would justly subject itself to ridicule, and lower in the eyes of the society the value of a distinction made the equivalent of so paltry a service. The individual would have been sufficiently gratified by a sense, that the magistrate saw his deserts, and he would have been highly flattered by the slightest public testimony of his personal approbation. It is not by regulations, general orders or other public acts of Government, that any thing could be effected in the excitement of the desired spirit of co-operation from the society, with a view to its moral improvement, every thing must be left to the discretion of our public officers, and we can only point out generally the line of conduct we conceive it most expedient for them to pursue.

57. No one can doubt the power possessed by our judicial officers of exciting the society to what they may wish who sees the degree of con-

sideration paid to every one reported to possess influence with them, who observes the avidity with which even access is sought, and remarks the consequence resulting from a personal confidential communication. In nothing which passes, not even in the form of address of a perwanna or a process of court, is the magistrate without the power of gratifying those with whom he may have dealings. Indeed his means of gratification are only equalled by his means of annoyance. All that is necessary is that every thing he does, should be done personally by himself, so that no one may suppose he owes a favor to other than the magistrate or be able to fancy he can trace an ungracious act to the private malice of the umlah which might be meant to express the magistrate's personal displeasure.

58. On the whole therefore as far as my observation has yet gone, I conceive the system at present in being to be as complete as any I have yet seen proposed nor do I think that even in the minor departments of it the alterations which have been suggested would be attended with substantial advantage. The magistrate with his thanadaree establishment is indispensible to the exercise of an adequate control over the zumeendars and native police institutions, who, without it would, there can be little doubt, begin by suppressing information and end by introducing the confusion of a state in which every one seeks to right and revenge himself. The subsidiary chookeedaree police is only adapted to cities and large towns, the residence of European officers, in which no similar institutions may have before been in existence. The mofussil police institutions must be left as they are controlled thro' the influence of the fear of punishment by the thanadaree establishments, and if it be sought to render them more efficient it must be thro' the society of their joint masters.

59. We must seek to gain the society not by coercion or the enactment of further penalties, but through the means of those possessing influence in it, who are to be gained by holding forth to them the ample means of reward in the gratificatiou of their ambition and vanity which government and its officers have exclusively at command. But for this

detained

detailed execution of this, we must depend upon the personal conduct and discretion of our public officers, for government can only point out to them generally, the nature of the object to be gained and of the means by which it is proposed to effect it, and perhaps suggest the general mode of their application.

60. The above general view of my opinions on the subject of the police is laid before your Honorable Board, as the result of an attentive consideration of the reports to which I have alluded, compared with such other information as I have been enabled to procure. The view is, as will at first sight be observed, in a great measure purely speculative, and upon many of the questions involved in it there is much room for variety of opinion; nor am I by any means confident that the light in which I have been induced to regard them may not be found to be erroneous when we come to give to them a more full consideration. Still as a ground work for a due examination of the question it may be useful; which is indeed my motive for offering to you observations so insufficiently digested. There are now only one or two points of minor importance connected with the subject, to which I shall further advert in this place. It has been stated, that the landholders will never be brought to co-operate cordially in subordination to such persons as now usually fill the office of police darogha, but that if the salary and general respectability of the situation were raised, so as to make it an object to natives of higher rank and family, the landholders might cease to feel that jealousy which now prevents their affording the desired co-operation. I am myself decidedly of opinion, that none but the magistrate in person would. under any circumstances, be able to procure this cordial co-operation. Daroghas of whatever class they may be, must always be regarded by the landed interest as interlopers, and as set over them, while the authority of the magistrate being the object of their habitual respect and fear is too far above them to excite any feeling, but a wish to secure his favour. There are however other objections to the experiment. The purchase would at best be dubious while the expence would be heavy and certain, at the same time it might lead to the introduction of a class of persons into these offices who would want that active

tive and resolute alertness indispensibly requisite, and who would be inclined to do by deputy what is now (as it should be) almost universally done by the principal.

61. There is however in the reports of most of the magistrates another proposition on the subject of these officers, which I have listened to with more disposition to admit its expediency. With a view to ensure a greater degree of activity from officers of this description, it may be advisable, that the magistrate should be vested with a more direct and entire authority over them, extending even to the power of removal or dismission, without reference to the court of circuit. It is evident that a man may be wholly unfit for an office of this nature against whom no positive accusation could be brought: A negative character such as is described by the magistrate of Behar, in which no feature good or bad is discernable.

62. The beneficial effect of the prescribed reference to the court of circuit, may be to retain in office a native servant who might otherwise from dislike or an improper bias in the magistrate, or for the mere purpose of making room for some other person be dismissed. The prejudicial result by encouraging darogahs to look to other authorities than that they serve, is to cramp the energy and debilitate the zeal of every magistrate in a high and arduous duty which calls for liberal confidence and effectual support. No feeling can be so destructive to all activity and zeal for the good of those we serve as the sense that we have a fee simple of the office we hold. It is to be feared that our darogahs have many of them begun to feel this. I do not speak too strongly when I say, that a magistrate against whom such a suspicion could be entertained, as that he would through passion, partiality or corruption, displace an honest and efficient darogha, must be of a character unfit to be intrusted with the other functions of his important charge. Before submitting any proposition for your consideration, I am notwithstanding desirous, that the Nizamut Adawlut should be consulted on the subject with a view to obtain their opinion on the propriety or otherwise of introducing some modification of the existing rule.

63.

63. It will not be necessary to notice on this occasion, the several local obstacles to the establishment of an efficient police, arising from the neighbourhood of a foreign or independent territory. These though now introduced anew into the reports of several of the magistrates must frequently before have been brought under the consideration of your Honorable Board. It might however be advisable to render general a convention of the nature of that lately concluded with the Nuwab Vizier, by which the magistrates have, I understand, been furnished with considerable facilities in the pursuit and apprehension of offenders, taking refuge in territory not subject to the operation of our regulations.

64. I have nothing further to offer on the subject of police, I proceed therefore to the second general head; that of criminal justice.

CRIMINAL JUSTICE.

65. The only legitimate object in the trial and punishment of offenders beyond the hope of correction is the suppression of crimes by the terror of example. The utility of punishment therefore is diminished (except as it deprives the object of it of the means of again committing a similar offence) if the effect of it in the way of example is by any means weakened; and that such must be the consequence where the punishment is delayed until the offence itself is nearly forgotten, it can require no arguments to prove.

66. By the present regulations every crime, except of the most trivial nature, must be tried by the court of circuit and a large proportion must be referred for the final sentence of the Nizamut Adawlut. In this mode of proceeding conviction is not sufficiently proximate to the commission of the crime or punishment to conviction. Nor is this the only consequence of the delay which necessarily intervenes between the reference of the trial and the receipt of the sentence of the Nizamut Adawlut. The ends of substantial justice are also frustrated by the protracted imprisonment to which innocent persons may be thus subjected, and

and the double result may be stated to be that the innocent frequently suffer without redress, the guilty without furnishing example.

67. It is also a fundamental principle never to be lost sight of, that the prosecution of offenders should be made as little burthensome as possible to the parties injured, and more particularly to their witnesses, either in direct expence or in personal inconvenience. The attendance therefore of prosecutors and witnesses before the magistrate in the first instance, and again before the court of circuit cannot but be felt as a grievance; to the lower classes, whose family depend for the day's meal on the day's labor, it may be nearly ruin.

68. The infliction of capital punishment could not be entrusted to any other than the supreme court of criminal jurisdiction—but capital punishment is denounced by the regulations against homicide alone, and wounding in the prosecution of theft and robbery; so that if the revision of the Nizamut Adawlut were confined to cases of capital punishment, their sentences might be received in the usual return of the post.

69. It has been suggested to me with a view to provide against the evils arising from the delay incident to the present system that all cases of theft and burglary, (the latter a crime of very different rate from that with which it is confounded by the title) all breaches of the peace and offences against morality, and generally all cases where a specific punishment of 14 years imprisonment is not denounced by the regulations, might be finally decided by the magistrate on the result of the examination before him. Every zillah is provided with a mahommedan law officer equally conversant in the law as the cauzees and mooftees of the courts of circuit, and frequently called upon to officiate as their substitute—with his assistance the magistrate, after adding to the preliminary investigation which he now makes of the prosecutor's witnesses, any evidence which the prisoner may wish to adduce, might complete the trial by taking a futwa and passing sentence.

70. A provision of this nature would undoubtedly be liable to many objections nor can I be prepared without more mature consideration

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and enquiry, to give any decided opinion on its propriety or otherwise. Our situation however, is such that we cannot fashion means for any practical arrangement towards the distribution of criminal justice which will not be in some of its bearings defective and undesirable, we must only aim as well as we can at reconciling dispatch with impartial decision trusting that a pure administration will counter-balance any deficiencies in the forms of proceeding.

71. It may be further remarked that by such a measure not only would the vexatious inconvenience, and absolute injury sustained by the parties in their present double attendance be obviated, but the labor of the courts of circuit would be so far reduced as to shorten considerably their detention from the civil branch of their duties.

72. Of the offences which chiefly disturb the peace of society those which belong to the domestic relations of mankind, such as adultery, seduction and fornication, would appear in fact to be more proper objects of a punchayte or arbitration of cast, than of public exposure to trial and punishment in a mode repugnant to the religious prejudices of the parties and destructive of all moral feeling. In these instances, as well as in all civil questions of cast, particularly those relative to marriage, any negligence or disregard of usages identified with the religious credence of the natives may be productive of very serious consequences.

73. Burglary, as well as theft, whatever may be the amount, would also be probably repressed with more effect by the immediate cognizance of the magistrate than by the more dilatory intervention of the court of circuit. The term burglary is in fact applied to offences of very remote characters; from a forcible entry into the brick built house of a rich merchant down to the clandestine entry into a matted hut with a view to steal a few seers of grain for the present support of life. The features of the offence and not the technical definition of it, should in such cases guide the magistrate either in committing the party for trial

before

before the court of circuit, or in punishing him under the authority which it was suggested to me as expedient to vest in all magistrates.

74. But the instances in which I have understood that the prompt decision of the case by the magistrate would be attended with most beneficial effect in the suppression of the offence are the outrages and affrays, when not attended with loss of life, which occur in disputes for land or crops. And if the magistrate were empowered in all such cases to restore the possession (subject to an ultimate decision of court) to the party previously in possession, the inducement to such outrages would in a great measure be taken away.

75. It is not sufficient that punishment should be prompt, it is also necessary, that every facility should be given to the conviction of offenders consistent with due precautions for the protection of innocence. The principal obstacle, after that arising from the personal vexation of repeated attendance is in the aversion of the natives to taking an oath, and to giving evidence in a court of judicature. In regard to the first point; if the aversion, as some persons surmise, refers only to the mode practised in our courts of administering oaths, by the Ganges water and Coran, some other mode might be discovered less obnoxious to their feelings, and equally binding on their consciences. With regard to the second point, the same means which shall bring forward the aggregate strength of society to the aid of the police, may gradually introduce a different sensation in regard to appearing as witnesses, and the natives of all ranks might learn that in the prevention of a crime, or in the apprehension of a criminal, they have done only half their duty to the public, unless they also contribute all in their power to his conviction.

76. In cases of gang robbery when the aversion of witnesses to declare their actual knowledge arises from a dread of the consequences to themselves, from the resentment of the prisoners, if acquitted, or if the accomplices are still at large, the removal of this obstacle to the conviction of dakoyts can only be expected from the confidence with which a further progress in the suppression of the crime itself, and a more substantial

stantial protection of society at large from personal outrage, may impress the public mind. The reward proposed by the acting magistrate of Burdwan, if designed to extend to witnesses for each dakoyt convicted through their testimony, would be wholly inadmissible: because though the probable abuse did not occur to him, such a temptation to perjury would be irreconcilable to the principles of law and morality. But his proposition for a discretionary power to the magistrate in the admission of King's evidence, appears to be judicious and promises great facilities to the detection at least, if not to the conviction, of criminals of this class.

77. The prevalence of perjury exclusive of the moral turpitude of the crime itself, is also to be lamented as opposing an obstacle to the conviction of offenders from the general disbelief of human testimony in consequence, and thus to the suppression of offences in general. The punishment denounced against it is sufficiently severe, but the almost impossibility of bringing it or the offence of forgery to punishment under a futwa of the Mahomedan law, is pointed out by all the magistrates.

78. This disbelief of testimony and the difficulties above noticed of obtaining evidence, have introduced an anomaly into the criminal jurisprudence of this country, wholly discordant to the legal practice of England, which knows no middle stage between conviction and acquittal. A culprit who cannot be subjected to the legal consequences of conviction is here retained in jail till he furnish security or shew signs of amendment, and instead of a specific sentence of imprisonment for a few years is exposed to the possibility of imprisonment for life.

79. It was not my intention to have adverted in these remarks on trial and punishment to the adequacy or otherwise of specific penalties on specific offences, but two points brought forward by some of the magistrates, may find their place here, the inexpediency of the exemption of brahmins in Benares from capital punishment, and the futility of imprisonment as a punishment of either example or reform; the exemption in question should, if it be continued at all, be rendered exceedingly narrow by the restricting it to the higher classes of brahmins,

or

or by confining it to the area contained within the circumference of the puckkosee, the sacred ground which includes the city of Benares: and as our jails appear to be viewed in many instances as a retreat from labour and a resource of gratuitous subsistence, an encrease in the severity of corporal punishment might be expedient in the case of those persons, to whom imprisonment holds out neither terrors nor inconvenience.

80. But punishment is of less importance than prevention, and the most solid ground of prevention is, in the amendment of the situation of the people themselves. The magistrate of Allighur will accordingly be found to ascribe the present infrequency of highway robbery to the recognition of the rights of the village zumeendars, and the more general admission of them to a direct settlement with Government, which has tended to reform their manners and to reclaim them from their former habits. The decrease of crimes in the Western Provinces from the operation which the security of landed property has had of attaching to the habits of peaceful life those men who under the former Government lived by rapine, and the encrease of crimes in Bengal from the unfavorable revolution which has taken place in the condition of the cultivators of the soil, appear to be the natural consequence of those different results.

81. Should the objections to the suggested enlargement of the powers of a magistrate and limitation of reference to the Nizamut Adawlut be found insurmountable, another mode which suggests itself for accelerating the final sentence on criminals is the establishment of a separate court of ultimate jurisdiction in our remote possessions. The expediency of a separate court of final resort for these provinces in *civil* cases will be discussed in its proper place, and should a subdivision of the Sudder Dewanny Adawlut be deemed either not requisite or not practicable, the powers of a Nizamut Adawlut might perhaps be vested in the board of commissioners. I know that in this proposition I do not consult either their inclination or their convenience, but I know also that the zeal with which their own proper duties have been performed during a period of 8 years with so much advantage to the state would not be

relaxed

relaxed from any addition of labour which might be imposed upon them. These points will however remain open for our future consideration when we may have before us the opinions of the several authorities we have deemed it proper to consult on the subject of the late general letters received from the Honorable Court of Directors in the judicial department.

CIVIL JUDICATURE.

82. If the present judicial establishments, not-withstanding the great and constant addition to the expense, originally enormous, by new adawluts, assistant judges, additional registers and an increase in the number of judges to the courts of appeal, are still inadequate to decide with even tolerable expedition the suits which come before them, it may be advisable to enquire whether a modification of the present system might not, by giving a different direction to the same agency, effect the object more satisfactorily.

83. The lists of undecided causes do not exhibit the whole of the existing evil; the unknown number of suits which are not brought forward, from despair of their being decided within a reasonable time, constitutes a grievance which baffles all calculation.

84. The estimate which the reports give of the time in which a suit may be decided in each tribunal does not exhibit the limit within which litigation is bounded. From the facilities afforded to appeals a suit may be kept pending in a manner not merely vexatious but ruinous to a plaintiff of the lower class.

85. The acting judge of Burdwan states, that a common peasant cannot get redress for a trifling exaction (trifling in its amount abstractedly yet bitterly oppressive to an indigent man) unless he can abide a contest of from 7 to 9 years. The ryet has, under the permanent settlement, no means of redress against the extortion of the zemindar, but a suit in a court of justice. The oppressive delay and expense of such a remedy would alone make it a mockery. But could the cause be brought

to

to immediate and cheap decision, still the procedure would be hopeless, because the settlement has left the land wholly at the disposal of the zemindar, and the law cannot interfere with the terms which he may demand for a lease, even though it should be sensible to every one that he tortures the attachment of the ryet to his native spot in order to squeeze from him an exorbitant rent.

86. The facility of appeal is founded on a most laudable principle of securing by double and treble checks the proper decision of all suits. But the eutopian idea in its attempt to prevent individual injury from a wrong decision has been productive of general injustice by withholding redress, and general inconvenience by perpetuating litigation; the peace of society and the general welfare of the state are less concerned that questions of meum and tuum should be well decided than that the ground of contention should cease "interest republicœ ut set finis litium."

87. Another grievance growing out of the delays which attend the decision of civil suits is the difficulty of executing the judgments of the courts when ultimately passed. In the lapse of years during which the litigation has lasted, the sureties may have died or become insolvent, or they and the defendant himself may have so secured their property by real or fictitious conveyances as to put it beyond the reach of a common process of execution; and even the thing in action although landed property may be similarly alienated. The Plaintiff therefore after all his trouble and expense may find himself under the necessity of commencing a new course of litigation with the melancholy prospect of a recurrence of the same delay, trouble and expense, for giving effect to the judgment which he has obtained.

88. The zillah judges will be found to allege generally that their necessary avocations in the criminal department, and the trial of summary suits for the possession of land and for rents leave them no time for the decision of regular suits—some of them find their time so entirely absorbed by their functions as magistrates, that even the summary suits remain undecided.

89. When functionaries of such high importance have more to do than it is possible for human labour to perform, the evil does not stop with the mere neglect of what is unattainable—Every man does as much as he can without being always regulated in his choice of the objects of his attention by so sound a discretion as might be wished.

90. But a further consequence of this disproportion between the duties and the physical powers of the executive officer is, that exclusive of what is neglected altogether or imperfectly performed by the judge himself, much important business is left to the native officers—and it will not be unfair to presume that a portion of this will be hastily or inaccurately done. In this relaxed mode of execution of the judicial functions, and particularly in the employment of the native officers to take the examination of witnesses, frequent injustice may be done, not only from the true merits of the cause being lost sight of but also from the greater chance of success which perjury has under this mode of taking evidence, than if a more solemn and deliberate performance of all the judicial duties were to take place.

91. An immediate relief of the civil courts from the summary suits which employ so much of their time might be effected, by transferring the cognizance of all questions of rent to the collector and by empowering the magistrate to pass an order relative to the possession of the land in dispute on the result of his investigation into the trespass or breach of the peace which may have attended the attempt at dispossession.

92. The regulation which requires the zillah courts to refer suits regarding rents to the collector for examination appears to have effected no good purpose, and the judge of Nuddea is of opinion that it has on the contrary thrown delays and embarrassments in the decision of such suits. He accordingly recommends that either the collector should be authorized to decide the case, or that his intervention should be dispensed with altogether.

93. It may be observed that the revenue authorities, especially in the upper

upper provinces, have an interest in maintaining good faith between the landholders and tenants, and have better means of becoming acquainted with their relative rights than the Dewannee Adawluts. The decisions of the collectors would be also unembarrassed by the technical pleadings and artificial delays of professional vakeels, and a power of revision in the superintending boards would ensure the proper adjustment of these suits and a due uniformity of decision.

94. A recent regulation has empowered the magistrate to certify to the civil court the existence of disputes concerning lands, likely to terminate in a breach of the peace; and directs the latter court on receipt of such information to call on the parties for the proof of their possession for the purpose of investigation. But this rule appears very inadequate for effecting its object—an immediate investigation is not enjoined, and if enjoined could perhaps not be executed without serious prejudice to matters of equal importance. So that the parties are ultimately driven by the delay to recur to forcible measures notwithstanding the actual interference of both courts in the manner specified.

95. As the reference of the case from the magistrate to the judge is in the present constitution of those offices a mere formality, there seems no valid reason why the enquiry into the fact of actual dispossession should not be completed by the magistrate in the first instance, and why he should not have power to restore the possession to the party forcibly disseized, leaving the question of damages and of right to the property for the future cognizance of the civil court. It has been found necessary in England to vest such powers in the justices of the peace. The nature too of the offence and its ordinary consequences belong rather to the jurisdiction of magistrate than of the judge. The best effects might be expected under a proper exercise of this authority, and to prevent so important a trust devolving to an unexperienced officer, an assistant or acting magistrate need not be entitled to act in these cases without a special power from the Governor General in Council or the Sudder Dewanny Adawlut.

96. If however these partial reliefs should be found ineffectual, the only

only further remedy which suggests itself at present is the separation of the offices of judge and magistrate. In fact the two offices appear to be nearly incompatible. The duties of a judge necessarily confine him to his court house. The duties of a magistrate can perhaps never be so properly executed as while he is engaged in a personal visit to every part of the district. The administration of civil justice requires the patient and cool deliberation of mature age. The preservation of the peace of a district calls for all the active energy of early youth. A judge should perhaps be abstracted from all private converse with the natives. A magistrate must maintain a most intimate communication with them and carry his researches into the most inmost recesses of their privacy. Justice should be blind, but police requires the eyes of Argus.

97. The delay which at present occurs in the decision of the summary suits relative to the possession of land, is stated by some of the zillah judges to be the principal cause of the fatal affrays which generally attend all such disputes. These affrays are also ascribed by others of the judges to the character and dispositions of the natives of the upper provinces (including Behar); and in the provinces of Behar and Benares to the negligence with which the permanent settlement was formed, in undefined estates without any specification of the quantity of land and the total uncertainty of all boundaries in consequence; which-ever of these causes may in reality have most influence, the immediate and decisive interference of the magistrate is equally indispensible.

98. In the event of the separation of the offices of judge and magistrate in the mode suggested, the powers which it has been proposed to vest in the latter for the final trial of offences to a certain extent might with more convenience be transferred to the former who should hold a monthly or half monthly jail delivery for commitments of that description, and with the assistance of his zillah law officer pass sentence before the witnesses are discharged from their original attendance.

99. It is superfluous to attempt a trace of the present overwhelming file of civil causes in its rise and progress. But I have been assured that

that the provincial courts of Moorshedabad and Patna, which now exhibit a list of undecided appeals of 200 in the first, and 607 in the latter, had neither of them more than 20 causes on the file at the close of the year 1801.

100. Among other suggestions which have occurred to me for the benefit of those distant parts of our possessions which I have lately visited, the expediency of the establishment of a separate Sudder Dewanny Adawlut for these provinces impressed itself forcibly on my mind. The distance from the presidency must in itself be an obstacle almost insurmountable to an appeal from the decisions of the Bareilly provincial court, or if the appellant should possess the means of surmounting this obstacle, the distance must prove a source of great expense and hardship to the opposite party who may not possess the same means. It may also be observed, that the number of causes appealable to the Sudder Dewanny Adawlut, which are instituted in these provinces does not shew the whole of the detriment suffered by the suitors in the several courts of this remote division. The maintenance of right principles and of uniformity of decision in the general administration of justice by the superintending power of the Sudder Dewanny Adawlut through special appeals and through interlocutory orders on petitions, is perhaps of more importance to the community than the exercise of its regular appellate jurisdiction.

101. This measure is also suggested by the judge of Etawa, who in his enumeration of the serious hardships now entailed on suitors and others seeking redress from the Sudder Dewanny Adawlut observes, that they are subject to a journey of more than one thousand miles, to a tedious and ruinous attendance of many months in a climate inimical to a native of these provinces, and where the language, manners, customs and even food of the people are different from his own.

102. The principal objection to a division of the superior court is perhaps, that in the result there might happen to be a wide discordance in decisions, and that the uniformity of judgments which is so important

an object of every judicial administration would be lost sight of. To this it may be replied, that nature as well as municipal laws and local polity have for many ages drawn a broad distinct line between the inhabitants of Bengal and those of the western provinces, so that the general rules now applicable to the one are frequently found to be entirely adverse to the circumstances of the other, and that instead of tying down the population of the western provinces on the state bed of Procrustes which was originally made for Bengal, it might be advisable to have a local administration with the means of observing, and the power of improving the actual condition of so large and so valuable a portion of the British empire.

103. The separation of the offices of judge and magistrate above alluded to, would not be a measure calculated to involve any additional expence; as the relief of the former from all avocations in the criminal department, would leave him sufficient leisure for the trial of all regular suits within the limitation of cognizance by the sudder aumeens, and by the provincial courts in their original jurisdiction, and the register's court might in consequence be dispensed with. The number of these sudder aumeens might also be increased, and their jurisdiction might be safely enlarged to the limit now cognizable by the register, since their decisions are not only appealable to the judges revision, but may be said to be passed under the check and control of his own immediate eye.

104. It is satisfactory to find that the recovery of small debts is facilitated by these subordinate tribunals and by the general institution of native commissioners, and that their decisions appear to be in general not only sufficiently prompt, but from the paucity of reversals of such decisions on appeal sufficiently correct. The benefit to the public might perhaps be more widely diffused, and the relief to the judges court from suits of minor importance be enlarged, by an adoption of the suggestions which will be found in the Allahabad report for a more general reference of causes to arbitration, and a recurrence to the original institution of local Punchuyte.

105. The testimony which is borne in that report to the utility of native commissioners applies with additional force to the case of Punchuyte. Mr. Fortescue observes that they reach the truth and unravel the cases which come before them better than we can do, owing to their superior knowledge of the habits and customs of the people which are too minute or domestic for our view; that they consider the parentage, the cast, the connections, and the circumstances in life of the witnesses when appretiating the credit due to their testimony, whether they are single or married, have children or other near relations whose welfare is superstitiously considered as identified with their own. All which are points of real importance in this country.

106. Among other points in which it appears questionable whether the practical execution has realized the object in view, I may advert to the institution of the professional pleaders in our civil courts. In the adoption of technical terms which are familiar to us from the judicial practice of our native country, this class of men have been sometimes denominated the bar. But we must not be misled by the use of this term into confounding them with the professional body of English lawyers from whom the judges themselves are selected and who form a permanent check on the decisions of those judges. The only object indeed of the institution was to provide for the suitors in our courts the assistance of men who might have the means and opportunities of acquiring a clearer knowledge of our legislative enactments, than the bulk of the nation, and to furnish the courts with the facilities in the adjudication of causes by a more intelligent arrangement of the pleadings and evidence than the parties themselves might be capable of. In both these respects I fear the Institution has failed.

107. The regulations enacted last year were intended to simplify judicial labor, and very probably have obviated many of the inconveniences which I have had occasion to notice. But they do not proceed far enough. They still retain too much of that over jealous spirit which pervades the whole of our regulations, and which presumes that powers indispensibly necessary in an executive officer will be invariably

variably abused. We pay our establishments on a scale calculated as sufficient to ensure their honesty, but legislate for them as if we had an internal conviction of their laxity. The caution proceeds from a laudable solicitude to secure a chaste administration of justice: but this is thoroughly done by the unremitting inspection, which all the judicial officers know to be exercised over them. An apparent suspicion of them, cannot but paralize the energies of these officers, and has a tendency to produce the very effect which it intends to obviate, by destroying that self respect, that pride of character, which are the best securities for an upright discharge of judicial functions or of any other high trusts. It is truly gratifying to me to be able to assert, that during my tour, I have witnessed the existence of those inestimable securities in a degree no less honorable for our country than fortunate for India.

108. In the review which the preceding remarks naturally lead me to take of the practical effect produced by our judicial system on the character and happiness of our native subjects, I am reluctantly compelled to confess that its operation appears not to correspond with what was to be anticipated from the judgment of those who framed the machinery of our judicial administration or from the uprightness of those who execute its details: we seem to have accomplished a revolution in the state of society which has by an unexpected fatality proved detrimental to general morals, and by no means conducive to the convenience of our government—since the first institution of zillah adawluts in the year 1780, and even from the more regular organization of them in the year 1793, a new progeny has grown up under our hand, and the principal features which shew themselves in a generation thus formed beneath the shade of our regulations, are a spirit of litigation which our judicial establishment cannot meet, and a state of morality certainly much deteriorated.

109. If in the system itself or in the practical execution of it, we should be found to have relaxed many ties of moral or religious restraint on the conduct of individuals, to have destroyed the influence of former institutions,

institutions, without substituting any check in their place, to have given a loose to the most froward passions of human nature, and dissolved the wholesome control of public opinion and private censure, we shall be forced to acknowledge, that our regulations have been productive of a state of things which imperiously calls on us to provide immediate remedy for so serious a mischief.

110. The habitual disregard of the obligations of an oath among the natives, has perhaps been encreased by the operation of our judicial system, and is accordingly considered by some of the judges to be confined to the persons who frequent our Adawluts. There is some consolation in the idea that a part of the community is not yet contaminated by this dreadful vice, and the further diffusion of the infection might perhaps be obviated by a less indiscriminate and loose mode of administering oaths. If a recourse to the solemn invocation of the Deity's name were to be had only on the most important occasions the most impressive mode of appealing to the conscience of the witness could be adopted, the laxity of morals which arises from oaths being made too common, would be repressed.

111. Another consequence of the indiscriminate mode in which all persons of whatever rank of life are subjected to the same form of examination is the aversion which the higher classes evince of appearing as witnesses; and the fact is stated by the judge of Nuddea and the provincial court of Patna that men of this description have been known to pay the debt in dispute and otherwise to incur considerable expence rather than attend the court. I am aware that the courts are vested with a discretion of dispensing with the corporal oath of such persons, but it must also be recollected that the courts are vested with a power of committing to close custody on the requisition of the parties to the suit, any persons refusing to be sworn whose evidence may be stated to be material, and there can be no wonder if he should prefer purchasing at any price an exemption from attendance to running this risk. I have not been able to ascertain at all to my satisfaction, whether the objection of these persons, be simply appearance in a public

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court or whether it extend to taking an oath under any circumstances. We have the precedent in the case of Quakers in England that British jurisprudence has, for the furtherance of justice, found it expedient to compound with prejudices: and the practice of taking evidence under a commission from the court of Chancery where illness prevents the attendance of a witness in court, might be ground for a compromise with any class bound by known religious principles to bear testimony only in private.

112. The advantage which is known to have been taken some years ago, of the aversion of the hindoos to taking an oath by the native practitioners in the supreme court at Calcutta, commonly described by the name of Bubbaileas, may have already found its way into our adawluts, and it is not impossible, that persons may be summoned as witnesses with no other view than to extort money from their fears and prejudices. There can be no doubt, that the facility with which charges of the most heinous nature were formerly received in our criminal courts, was soon converted by the natives into an instrument of extortion as well as of revenge, and there may be reason to apprehend, that the checks since imposed against false or exaggerated accusations may not have proved a sufficient protection from the consequences of original arrest, which in a mind of acute feeling are not compensated by subsequent acquittal, and which are of course attributed by the sufferer to the laws themselves.

113. A judicial administration which knows no respect of persons, which makes no distinction between the prince and the peasant, between the brahmin and the soodur cannot be popular in India, and we accordingly find, that the greatest boon which we can bestow on our feudatory jagheerdars in the western provinces, is exemption from our regulations. Time and better acquaintance with those principles of pure equity on which we proceed, will correct this; but the correction will begin in the gradual obliteration of the distinctions of cast now as obstinately upheld by the superstitious ignorance of the lowest, as by the policy of the highest. It is impossible not to see how fast the reverence for those distinctions wears out among those who have much communication

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with us. A considerable improvement has certainly taken place on the point to which I have been referring by the modifications adopted in civil processes. But it occurs to me that greater attention might in the practice of the courts be paid to the distinction of ranks ; and to the prejudices of the natives in that respect, without trenching on the fundamental principle of extending equal justice to all.

114. Another effect of our system is the disgust which it gives to the higher classes of natives in the loss of all prospect of respectable provision under the economical scale of our native establishments. The door of official emoluments, and to stations of dignity, is necessarily closed against the natives by the exclusive employment of the covenanted servants of Government ; but if the sense of their exclusive possession of the land, should not be sufficient counterpoise for the reservation to ourselves of the advantages of service perhaps some further alleviation to the feelings of persons heretofore of rank and consideration, and who still possess property, might be found in the grant of titles and dignities by the British government, and in certain honorary exemptions and privileges. The promotion of distinguished persons not heretofore ennobled either on the grounds of public service or of personal merits to rank and honor, would on many substantial accounts be highly expedient.

115. The present state of landed property in Bengal may also be brought under review as connected with the judicial administration, since it appears to have originated more from the practical operation of legal decisions than from the fiscal regulations of this government. The powers which have been assumed by the auction purchasers, universally and probably by the original proprietors also, as in the instance stated of the Rajah of Burdwan, under the cover of summary suits, and the still more summary process of notices of ejectment, have completely destroyed every shadow of a right in the tenants, and reduced a happy, and comparatively rich peasantry, to the lowest state of indigence and penury.

116. It can I believe admit of little doubt, that no part of our system of government is more unpopular than the measure of public sale of land for the recovery of arrears of revenue, and that in the indiscriminate and

extensive

extensive recourse which has been had to this harsh measure, a greater revolution has been effected in the landed property of India, in the course of a few years, than what the lapse of centuries will be found to have produced under the Mahomedan governments. The effects which have attended the extension of this system into the western provinces, immediately on their coming under our authority, are forcibly described in the report of the judge of Allahabad, and will be noticed in my report on the several subjects relating to revenue which have been brought under my notice.

117. The same indigence and penury are stated by the acting magistrate of Furruckabad to exist in these provinces also—and the description if meant to extend beyond the class of professional mendicants, and the redundant population of great towns, may perhaps apply to the tenants in the large estates where the same causes as above described, will be productive of the same effects. But the bulk of the agricultural population connected with the hereditary property of the soil, certainly exhibit a very different picture.

118. I cannot either omit noticing the effect which the duty on spirituous liquors appears to have produced on the morals and habits of the people at large; the principle of the tax is clearly unexceptionable, and its name and existence in India, are anterior to the establishment of the British government. But its operation instead of being a check upon an existing vice, as it was intended to be, has been to diffuse that vice more generally; instead of being considered as an instrument of police for the preservation of morals, it has been followed up wholly as a source of revenue, and the consequence is, that the habitual use of intoxicating liquors and drugs has not only been encouraged where it already existed, but has been introduced into districts where it was hitherto unknown, and extended in other districts beyond the limits of the principal cities to which it was formerly confined.

119. In looking for a remedy to these evils, the moral and intellectual improvement of the natives will necessarily form a prominent feature

ture of any plan which may arise from the above suggestions, and I have therefore not failed to turn my most solicitous attention to the important object of public education.

120. The humble but valuable class of village schoolmasters, claims the first place in this discussion. These men teach the first rudiments of reading, writing and arithmetic for a trifling stipend which is within reach of any man's means, and the instruction which they are capable of imparting, suffices for the village zeemeendar, the village accountant, and the village shopkeeper.

121. As the public money would be ill-appropriated in merely providing gratuitous access to that quantum of education which is already attainable, any intervention of government either by superintendance, or by contribution, should be directed to the improvement of existing tuition, and to the diffusion of it to places and persons now out of its reach. Improvement and diffusion may go hand in hand; yet the latter is to be considered matter of calculation, while the former should be deemed positively incumbent. The general, the sad defect of this education is, that the inculcation of moral principle forms no part of it. This radical want is not imputable to us. The necessities of self defence (for all our extensions of territory have been atchieved in repelling efforts made for the subversion of our power) and our occupation in securing the new possessions, have allowed us till lately, but little leisure to examine deliberately the state of the population which we had been gradually bringing beneath our sway. It was already vitiated. The unceasing wars which had harassed all parts of India, left every where their invariable effects, a disorganization of that frame-work of habit and opinion, which enforces moral conduct, and an emancipation of all those irregular impulses which revolt at its restraint. The village school-masters could not teach that, in which they had themselves never been instructed; and universal debasement of mind, the constant concomitant of subjugation to despotic rule, left no chance that an innate sense of equity should in those confined circles suggest the recommendation of principles not thought worthy of cultivation by the government. The remedy for this

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is to furnish the village school-masters with little manuals of religious sentiments and ethic maxims, conveyed in such a shape as may be attractive to the scholars; taking care that, while awe, and adoration of the Supreme Being are earnestly instilled, no jealousy be excited by pointing out any particular Creed. The absence of such an objection, and small pecuniary rewards for zeal occasionally administered by the magistrates, would induce the school-masters to use those compilations readily.

122. To those who are anxious to propagate among the vast population of this empire the inestimable lights of true religion, it may be confidently maintained, that there is no hope of success but by rendering the people capable of understanding that which is proposed to them; open the minds of the rising generation by due instruction; give them a habit of reverencing the principles which the christian doctrine enjoins without stimulating the parents into opposition by teaching on points adverse to their superstitions, and their inevitable rejection of beliefs irreconcilable to the reason which you will have enabled them to exercise, and repugnant to the probity which you will have taught them to admire, must render certain their transition to the path you wish. As it is, their ignorance insures their tenaciousness of their earlier impressions, and pledges their implicit submission to the dictates with which the brahmins would counteract the object were they alarmed into contest. The progress to be effectual, must be patient and silent; like every other benificial change, it must rise out of the general sense of society, not be imposed upon it; and to produce that sense, I know no mode but education.

123. The next gradation in public tuition is the higher class of teachers to be found in the principal towns, and the only question in regard to them appears to be the expediency of furnishing them with the means of inculcating more accurate ideas of general science and sounder principles of morality.

124. In these towns will also be found the same medium scale of education for the class of shopkeepers, artificers and labourers as in the country villages, but in these towns, and principally in the chief station

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of the zillah, and in the neighbourhood of our jails will be found a numerous population, which seem to call for the particular attention of Government. I allude to the offspring of mendicants and vagrants, who nurtured in idleness and vice, are destined to recruit the ranks of the professional thieves infesting all great cities. Houses of industry, for the education, reformation and employment of these infant profligates, appear to be particularly needed.

125. That the native governments were not inattentive to the important object of public education, is evinced by the numerous grants of rent-free land, and of pecuniary allowances, for the endowment of public seminaries and the education of particular descriptions of pupils. But in the general disregard of established institutions which appears to have marked the steps of the British Government, hitherto, their appropriation has been lost sight of, and the funds have through an inattention been converted into private property by native individuals.

126. In such of these institutions as yet remain, and in such of them as may be still recoverable to their original purposes, the point for our consideration will be the nature as well as the extent of the interference which it may be proper for Government to exercise, and the mode in which that interference should be applied for giving an improved direction to them.

127 With this view I beg leave to propose, that the several plans which may be or have been suggested for the improvement of education in this country; should be referred to the consideration of Committees to be formed at the stations of Dacca, Patna, Moorshedabad, Benares, Barelly and Furruckabad, of the principal civil officers residing there, and that their opinions be afterwards submitted to the deliberate revision of the most experienced servants in the judicial and revenue departments at the presidency.

128. In the mean time two experimental schools, one for hindoos and one for mahomedans, might be established at each zillah station under the superintendence of a committee, consisting of all the civil servants at

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the station, including the surgeons, together with any resident gentlemen not in the service who might be willing to lend their assistance; the expediency and the means of extending the plan beyond the sudder stations, will form a part of the deliberation of the provincial committees to be submitted to the control committee at the presidency.

129. The decay of religious endowments and public seminaries is noticed by several of the magistrates; and the decline of morality is stated to be a subject of reproach against us by all the natives whom birth or education, have inspired with concern for the good order or well being of society.

130. If the operative effect of the british administration has been, however unintentionally, to do away the restraint which before existed on the evil passions, while the encrease of wealth, and more general diffusion of it, arising from the solid principles of equal justice, have afforded additional temptation to their indulgence, the reflecting part of the community may probably be impressed with an erroneous idea, that vice if not encouraged, is not sufficiently dis-countenanced by the ruling power.

131. It certainly does not appear to have been ever the intention of the laws enacted by the british government to lessen the obligation of religion, or to weaken the proper influence of the priesthood. But that such has been the result of the general system cannot be doubted. This result may be ascribed partly to the omission of a positive enactment in support of the existing institutions of the country, partly to a too strict adherence in the judicial officers to the letter, without adhering to the general spirit of the laws, and partly perhaps to an expansive tendency in the human mind which in a state of freedom imperceptibly seeks, progressive improvement with an impulse, which nothing but an injudicious attempt to introduce it too rapidly is capable of checking.

132. The immediate encouragement of the superior descriptions of science by any bounty to the existing native colleges, appears to me a

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project altogether delusive. I do not believe that in those retreats there remain any embers capable of being fanned into life. It is true, the form of tuition is kept up in them,* but the ceremony is gone through by men who are (as far as I could learn) devoid of comprehension in the very branches which they profess to teach. I was particularly curious to assure myself of the state of learning in the university of Benares, the place where one should expect that ancient acquirements would be found in the best preservation. My incompetence to judge on the substance of the answers given by the young men examined before me, did not extend to the manner of their performance, which was such as inspired the notion that every thing they said was wholly by rote. On following up this suspicion I ascertained that I had guessed accurately. I remained satisfied that the students only got by heart certain formularies unexplained to them by professors incapable of expounding the spirit of the lessons. Of course, the instruction, unless where it chanced to fall on some mind uncommonly vigorous and acute, would have very limited effect in future application, and if it did happen to be bestowed on a genius able to unravel it, the rational calculation was, that it would only render him more dexterous in those crooked practices which the depraved habitudes of the community would offer to his imitation. I thence conceive that the revival of the liberal sciences among the natives can only be effected by the previous education (beginning with the rudiments) which shall gradually give to individuals the power of observing the relations of different branches of learning with each other, of comprehending the right use of science in the business of life, and of directing their enlargement of thought to the promotion of those moral observances in which rests the temporal convenience of society as well as the sublimer duty of man. Then, but not till then, such records, or such traces of ancient lore as remain in the universities may be useful. Consequently to this opinion, I must think that the sum set apart by the Honorable Court for the advancement of science among the natives would be much more expediently applied in the improvement of schools, than in gifts to seminaries of higher degree.

133. It is satisfactory to find that there are any natives of birth and education who still feel an anxiety for the improvement of the general morals. For it is through their agency that such a measure is most likely to succeed. It is also pleasing to observe, from the accurate and lively picture which Mr. Fortescue has drawn of the public feeling, that while many solid and essential benefits are acknowledged in the security of person and property, in the advancement of agriculture and of commerce and in the free enjoyment of wealth, most of the disadvantages enumerated, where they attach to the executive details of the laws are capable of easy correction, and where they spring from the habits and manners of the people themselves, may be expected to yield to the silent but entire operation of the measures now in contemplation.

134. In the infancy of the British administration in this country, it was perhaps a matter of necessity to confine our legislation to the primary principle of justice. "Not that nice and delicate justice, the offspring "of a refined humanity, but that coarse, though useful, virtue, the guar-"dian of contracts and promises, whose guide is the square and the rule, "and whose support is the gallows."

135. The lapse of half a century and the operation of that principle have produced a new state of society, which calls for a more enlarged and liberal policy. The moral duties require encouragement and experiment. The arts which adorn and embellish life, will follow in ordinary course. It is for the credit of the British name, that this beneficial revolution should arise under British sway. To be the source of blessings to the immense population of India, is an ambition worthy of our country. In proportion as we have found intellect neglected and sterile here, the obligation is the stronger on us to cultivate it. The field is noble: may we till it worthily!

On the River Ganges the 2d October 1815. } (Signed) MOIRA.

P. S. Since preparing the above remarks upon the several branches of our judicial system, I have received the report of the Resident at Dehli on matters connected with this division of his duties. It is interesting in many particulars, and I must regret, that I did not receive it in time

Resident at Dehli.

time to incorporate the ideas it has suggested in the body of what I had previously committed to paper, I can now only offer one or two insulated remarks upon the subject of it.

It would appear that the judicial administration of the territory, superintended by the Resident at Dehli, is conducted generally upon the same principles as form the ground-work of the system introduced into our other provinces. The civil courts differ in little else than the want of an arrangement of jurisdiction amongst the European officers, calculated with reference to the amount litigated. The state of civil business in these courts, would seem to wear a much better aspect than in the generality of courts under the influence of our system, but this, as well as the prosperous state of the country generally, may as much be owing to the individual character and exertions of those entrusted with the superintendence, as to other circumstances.

In the police department the maintenance of the responsibility of zemindars, would appear to be the most material variation from our general system. The responsibility falls upon the village community and extends to the value of what may be lost in robbery, unless the robbers can be traced. Many of the objections to a general resort to such a practice throughout the provinces, are obviated in the case of Dehli by the state of property and the constitution of society in the villages there. Each forms a separate community and the responsibility acts as a contribution levied on all, where all may have been involved in the guilt. A similar responsibility in the zemindars of Bengal, would assume a different character; although this principle is recognized by the law of England, where in certain cases of robbery, the county is made answerable, the real equity of its application must depend on local circumstances. It is probable, that with regard to the Dehli territory, inconveniences in it, very obvious, are obviated by the sound and judicious discrimination of the resident and his able assistants.

Mr. Metcalfe's observations on the suspension of capital punishment in his administration of criminal justice, are in the highest degree valua-

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ble, and evince a knowledge of human nature, combined with a sensibility and justness of feeling, which cannot be too much admired. It is to be remarked, that the criminal code of our regulations is remarkably mild in this respect, since it restricts the punishment of death to cases of murder, or of violent wounding in the prosecution of robbery by open violence.

The revision of the rules for the supply of troops on march, the abuse of which in the compulsory requisition of men, cattle, and carriages to hire, is so severely reprobated by Mr. Metcalfe, forms one of those points which remains for the consideration of government.

The propriety of adopting Mr. Metcalfe's recommendation, for the new arrangement of his assistant's duties is a question, which will likewise be considered separately.

It is impossible for me to close these observations without rendering to the character of Mr. Metcalfe that tribute, which it eminently demands. I have had the best opportunities of learning the tenor of his conduct. The uprightness, the patience, the moderation, the kindness, which mark all his procedures towards the natives, are not less distinguished than his talents and indefatigable application. The reverence with which the natives behold the exercise of such qualities has gone far to counterbalance the forwardness of a restless and unattached people. I trust that my representation of a conduct so materially conducive to the advantage of the Company, cannot fail to recommend Mr. Metcalfe in a peculiar manner to the consideration of our Honorable employers.

(Signed) MOIRA.

To W. B. BAYLEY, Esq

Secretary to Government in the Judicial Department.

SIR,

Sudder Dewanny and Nizamut Adawlut.

I AM directed by the Courts of Sudder Dewanny and Nizamut Adawlut to transmit to you, to be laid before the Right Honorable the Governor General in Council, the accompanying copy of a Minute recorded by the third Judge on this date, together with copies of the paper and Appendix therein referred to.

2.—As the pressure of other business precludes the possibility of the Court being able, at an early period, to give the different subjects discussed in the above papers, that full consideration which their importance demands, and as arrangements, connected with the matters referred to, are understood to be at present under the deliberation of Government, the Court have thought it proper, in compliance with MR. STUART's request, to submit the papers in question, without waiting till they could be accompanied by the observations of the other Members of the Court.

I am Sir,

Your Obedient Humble Servant,

M. H. TURNBULL,

Register.

FORT WILLIAM,
The 8th Nov. 1815.

BENGAL SECRETARIAT LIBRARY

Mr. Stuart's Minute.

IT is understood, that the Government have under their consideration some questions on the Judicial System of these Provinces, referred to them by the Authorities in Great Britain.

2.—I have for some time devoted the scanty leisure which we are enabled to command from our duty, in preparing a paper on the same subject which I now beg to lay before the Court.

3.—I should be very glad if this paper could go before the Government with the sentiments of the other Members of the Court, on the various statements and arguments which it embraces; and I trust that they will not deny the Government and the Authorities in Great Britain, the benefit of their opinions.—But as it is not to be expected that any of the Judges will have it in their power to record their sentiments at an early period, I hope the Court will see no objection to comply with my wish, that my paper may be immediately submitted to the Government.

4.—I could also wish that a copy of the paper be transmitted to the Courts of Circuit for the Divisions of Benares and Bareilly, to which Divisions the discussion more particularly refers, that the Judges of those Courts, whose local experience so well qualifies them, may have an opportunity of communicating their judgments on the advantages and defects of my propositions.

5.—I have certainly a strong persuasion of the necessity of establishing a new superior Court in the new Territory, and of transferring

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to respectable Native Officers a portion of the duties to which the British Officers are so clearly unequal —But I repeat what I have intimated in the paper, that I am more sensible of the difficulties which exist to a proper arrangement, than confident in the efficacy of the measures which I have myself suggested.

6.—Since completing my paper, another arrangement has occurred to me which may be thought free from some of the objections to which the plan contained in the paper is open; and of which I will therefore offer a slight sketch for deliberation.

7.—It is as follows.

8 —That the Districts in the Ceded and Conquered Territory, (with the exceptions to be mentioned hereafter) be placed under Collectors, with a Maal Adawlut, to be established on the principles explained in the Plan, and with the Powers of Magistrate. The Collectors to be aided in their duties by Covenanted Servants, as Assistants, and by Natives upon a respectable footing.

9.—That a Court for the decision of Civil Suits, the claim in which shall not exceed, say 1600 Rupees, shall be formed in these districts, to be conducted by a Native Judge on a respectable footing —His decrees to be executed by the Collector, in his Maal Adawlut, as a check against abuse; under rules calculated to prevent this duty proving too burthensome.

10 —The present Judges and Magistrates to be withdrawn from these districts and formed into two Courts of Circuit and Appeal, consisting each of three Judges.

11.—As a Court of Circuit they would possess generally, the same powers as the present Courts of Circuit, and perform the Jail deliveries of the districts placed within their jurisdiction.

12.—As Civil Courts I propose, that they shall hold a Maal Adawlut to superintend the District Maal Adawlut.

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13.—As Civil Courts they would also receive the appeals from the district Civil Courts, and try in the first instance all claims exceeding the competence of the district Courts. This business they would transact at their own station or at the station of the districts as they might find most convenient.

14.—I should propose the following jurisdictions for the Circuit Courts.—For one Furruckhabad, Etawa, and Agra.—For the other Barcilli, Moradabad and Allyghur.

15.—The Sudder Dewanny Adawlut and Nizamut Adawlut, I should propose to establish on the general principles stated in the plan; but with the necessary modifications, which the modification of the plan will require.

16.—The districts of Allahabad and Cawnpore are included among these districts, for which I have suggested the general arrangement described above, but to keep the circuits within moderate limits, I propose to place Cawnpore and Allahabad under the immediate controul of the Sudder Dewanny and Nizamut Adawlut.—As the superior Court would be fixed at Cawnpore, the circuit duty of the Nizamut Adawlut would be confined to the single district of Allahabad.—The monthly jail delivery of Cawnpore, would not take the Judges from their station.

17.—The districts of Bundelcund, Seharunpore, N. and S. and Goruckpore, I would make into residencies, on the principles explained in the plan.

18.—The difficulty of finding a sufficient number of individuals duly qualified to fill the proposed office of Resident, is certainly an important objection to the original plan, which is surmounted by the modified one. The duties of the Collectors in the modified scheme, are much less arduous and responsible;—and those officers would be subjected to a near and vigorous controul.—The same check would obviously operate upon their native officers.

For

19.—For the three residencies which the modified plan proposes, individuals might readily be found, in whom such a trust might be confidently reposed.

20.—The expence of the arrangement need not exceed that of the present establishments; the Collectors being kept upon their present allowances, and the Judges of the Courts of Circuit and Appeal placed upon reduced salaries.

21.—Should this modified plan be approved, I should think it equally well adapted to the Benares Province; and in that case an additional Collector should be established at Ghazeepore, or somewhere in that neighbourhood. The mischiefs which ensued in that part of the country from the abolition of the Ghazeepore Court, are now understood, but the authority of that Court is but ill supplied by an assistant, having a jurisdiction in three distinct Zillahs.—I beg to cite on this point a letter written by me several years ago, which had not the good fortune to meet with attention (see letter from the Register Nizamut Adawlut to the Chief Secretary to Government, under date 23d December, 1813.)

22.—In delivering in the accompanying paper it may be proper to notice, that, the statements of our business refer to the last six months of 1814. The latest period for which they have been prepared: But I am satisfied that when the account shall be made up to the end of the present year, it will not afford a result that will at all shake my argument.

23.—I must likewise express my regret that I have not enjoyed the advantage of seeing the letter from the Honorable Court of Directors, to which I have referred in the beginning of this minute. It has I understand been received several months; but has not yet been communicated to this Court.

(Signed) JAS. STUART,

A True Copy,

M. H. TURNBULL,

Register.

Remarks on the Existing Judicial System of the Provinces, immediately subject to the Presidency of FORT WILLIAM, *with proposed Amendments.*

Having referred to our Civil file, I find that we admitted seventy-six appeals during the last six months of 1814, while we disposed of thirty.

2.—There were three hundred and sixty-nine appeals depending on the 1st July 1814.—There were consequently four hundred and fifteen causes upon our file at the beginning of this year.

3.—It is observable that this accumulation has grown up not so much from a great influx of appeals as from the slow progress made in disposing of them. The number of appeals admitted in the year 1814, is indeed rather large being one hundred and sixty-six. But the annual average of appeals admitted for the last seven years commencing with 1808, is only about one hundred. During the same period the annual average of our decisions is about fifty.

4.—To persons not well acquainted with our judicial system, it must naturally cause surprise that a Court which is constantly sitting, which has always consisted of three Judges and for several years past of four, should not be able to dispatch more than fifty appeals in the twelve months.

5.—The explanation is to be found in the other various and important duties of the Court, which absorb so much of their time as to leave them a comparatively small portion of it to devote to the appeals.

6.—The general superintendence and controul of the administration of justice civil and criminal throughout the immense territory immediately dependant on the Government General, forms a principal branch of these additional duties. This province of the Court calls upon them to watch over the whole of the vast organization, by which the laws are dispensed to the people of these extensive regions:

gions: to see that the Courts and Judicial Officers are in constant motion; that as far as may be practicable justice is not denied or improperly delayed; that persons accused or suspected of crimes are discharged or brought to trial within reasonable periods; to attend to the state of the jails, the health, treatment and disposal of prisoners and convicts; to issue instructions to the Courts, and officers below in various cases requiring reference to the Court, or in which those officers stand in need of aid or advice, and finally to check all irregularities, abuses and misconduct. In the same department the Court conduct their correspondence with the Government in the course of which they have to report on numerous matters of difficulty; frequently to discuss plans for the improvements of the system, and to frame regulations necessary to carry new measures into effect. I shall readily be credited when I state that this duty severely tasks the time and faculties of the Judges.

7.—The remaining miscellaneous business of the Court is judicial, chiefly civil; and is transacted on the applications of parties in open Court. It involves every question, exclusive of appeals and trials which upon the principles of the system can be brought before the Court respecting its own proceedings or the proceedings of more than fifty Court's subject to its authority. The important duty of deciding upon the allowance of special appeals falls under this head.

8.—The criminal trials constitute another formidable branch of the Courts business, and may certainly be accounted one of the most operative causes of our civil arrear.—The great increase in the numbers referred to this Court is to be traced to Regulations 53 of 1803, 8 of 1808, 1 of 1811 and 15 of 1812.

9.—When the dreadful prevalence of gang robbery in the Lower Provinces at length roused the attention of the superior Authorities at the Presidency, it was discovered that our code had not provided a certain and adequate punishment for this atrocious offence.—The Sentence

was

was therefore determined by the Musselman Law Officers, who in the greater number of cases awarded an arbitrary punishment and apportioned it upon the absurd and dangerous principle of degrees of proof—If the Judges of Circuit disapproved the sentence, they had indeed the power of referring the trial to this Court.—But unfortunately the inexperience of our Judges and the difficulties in which they were placed, made many of them too ready to embrace a principle of decision which enabled them to escape from the serious and painful alternative of pronouncing a full conviction or an absolute acquittal. The principle had accordingly a most extensive operation, and its effect must have been either to punish and stigmatize innocent men, or more frequently to set at large the most desperate villains, after a limited imprisonment, to renew their depredations on society and to wreak their vengeance on the prosecutors, police officers and witnesses, who had been the means of their apprehension and conviction.—I have no doubt that this was one principal cause of the extent to which decoity had spread.

10.—Regulation 53, 1803,—which was proposed by this Court, went far to correct that mischievous practice and its fatal effects. It provided in substance—that all convictions on aggravated cases of gang robbery should be followed by death, or perpetual imprisonment and transportation, and be referrible to the Nizamut Adawlut.—The law officers almost always convicting except in very clear cases---This regulation brought the majority of trials for aggravated decoity before the Nizamut Adawlut; and the accused were in consequence after a full and deliberate examination, either clearly acquitted or convicted and sentenced to a punishment, which secured the community against their future aggressions and inspired a salutary awe among the evil disposed in general. Regulation 8, of 1808, which extended the provision to all convictions of gang robbery rendered the remedy complete.

11.—In my judgment this measure was the first important step to the suppression of gang robbery; since all the subsequent im-

 prove-

provement in the Police must in a great degree have been vain, if when the Magistrate detected and brought to trial robbers, they had escaped condign punishment under the nugatory sentences, which the Courts of Circuit had been too much accustomed to pass.

12.—The importance of these regulations have not been sufficiently weighed on in any discussions of the Police, which have fallen under my observation.—I have been therefore tempted to dwell on them more than was necessary to my immediate purpose. But the essential benefit which they produced was purchased at the cost of imposing on this Court an enormous burthen of criminal trials, to the great detriment of its civil business.

13.—The statement, No. 1, which I have given in an Appendix to this paper, clearly exhibits this consequence.—The operation of Regulation 53, 1803, which passed in July of that year, would begin to be felt in the following year.—The statement accordingly shews a remarkable increase of trials from 1804.—In 1808, the attention of Government having been awakened to the evil, it zealously interposed with all its weight and authority, and the statement evinces the effect in a still greater augmentation of trials from that year—about 1810, gang robbery had greatly declined.—During the period between 1804 and 1810, but more especially during the years 1808, 9, 10, the pressure of criminal business has been heaviest on the Court from the serious nature and length of the trials, though the numbers have since continued largely to encrease.

14.—The increase since 1810, is to be ascribed in part to the greater activity given to the Police in the new territory after the reduction of gang robbery in the lower provinces, afforded the Government leisure to attend to the Police of the western provinces; and in part to Regulations 1, 1811 and 15, 1812 making burglary and the receiving of stolen property, punishable to the extent of confinement for fourteen years.—These convictions were not necessarily referrible to this Court, but the Courts of Circuit having no powers of mitigation,

tion, found it necessary to make very numerous references to the Court for that object.—Yet notwithstanding the great increase of numbers the trials since 1810, have generally proved of a nature so much less difficult than those which previously fell under the cognizance of the Court, that the pressure of them has been less severely felt —It is obvious that they must otherwise have been wholly beyond the strength of the Court, even had all its time been given to them.

15.—The result of this increase of the criminal trials, may be stated thus.—From 1799 to 1803 inclusive, the whole number of trials decided is six hundred and twenty-seven —The annual average of the five years one hundred and twenty-five.—From 1804 to 1814 inclusive, number decided is 3828.—The annual average of the eleven years is three hundred and forty-eight nearly treble the former average —I have before stated that the trials though more numerous since 1810, have not been generally so important or difficult; but after due allowance for this circumstance, the increase in the trials will go far to account for our civil arrear (Appendix No 2.)

This statement is exclusive of 303 miscellaneous cases.

16.—The consequences of the new measures of Police have also pressed heavily on the Court in its superintending capacity;—and in its correspondence with the Magistrates and the Government.—It has been the arduous and delicate duty of the Court to temper the violent exertions found necessary to subdue the mischief; and to restrain and guide the ardour of the Magistrates and Police officers, which excited by a strong sense of the evil, the fear of punishment and the hopes of reward, has often rendered those Officers not sufficiently attentive to the means which they employed.—The best endeavours of the Court to arbitrate between the claims of public justice, and the liberty and happiness of individuals have, I fear been very imperfect; but they have been and continue to be made at a great expence of time and labour.

17.—I have attempted to estimate the portion of time which the three great branches of our business civil, criminal and miscellaneous res-

respectively occupy, and though precision cannot be expected in such a matter, I believe that one third for each is not very wide from the truth. But I must add that each branch is constantly in turn encroaching on the others, and that there are invariably arrears in all the three.

18.—According to this estimate then, barely a third portion of our time can be given to the appeals.

19.—The difficulty of the civil causes which come under the Court's cognizance, is also unquestionably a reason of the slow progress which is made in disposing of them.—They frequently comprehend transactions of long standing, numerous parties—and complicated interests.—They are appeals upon written evidence of facts—and every person conversant with judicial matters, knows the tediousness which inevitably attends such proceedings.—The Courts are further without any fixed system of jurisprudence to direct their investigations—and govern their decisions—and the Judges who have to contend with these difficulties are not only destitute of legal knowledge, but from circumstances which admit not of control, cannot all be selected for discretion and knowledge of business.

20.—If I have given above a faithful exposition of the state of our business, it must be acknowledged to require the most serious consideration, since it too nearly amounts to a stoppage of justice in the highest tribunal in the country.

21.—The subject has accordingly engaged the attention of the Government, while employed in a general review of the administration of justice in these provinces; and the fruit of their deliberation has appeared in several Regulations recently promulgated, some of the provisions contained in which, are directed to the end of reducing the business and improving the efficiency of this Court.

22.—Could I have satisfied myself, that any hope existed of these provisions accomplishing their object so far as to render this Court tole-

tolerably efficient to its duties, I should willingly have spared myself a task which I cannot execute without sacrificing some part of that time, which the duties of my Office so urgently claim; and which that pressure must prevent me from performing in a manner at all suitable to the importance of the subject. Could I have even persuaded myself that the result was doubtful, I should at least have waited to see the effect produced by the new Regulations.—But my own conviction of their inadequacy to produce any substantial relief is so strong and as far I can judge, this opinion so entirely coincides with that of all those who have any knowledge of the subject, that I have thought the evil cannot too soon be again brought under discussion.

23.—I will likewise confess my anxiety that the authorities in Europe should understand, that this Court have never entertained the hope that the new Regulations would enable the Civil Courts to master their business; a misconception which I have reason to believe has prevailed here, and into which those authorities might otherwise be led by Mr. Secretary Dowdeswell's letter of the 19th July 1814, signifying to this Court, that Mr. Bayley had been directed to communicate privately with the Judges of the Court respecting the intended Regulations.

24.—For myself in particular, with an exception too insignificant to deserve mention, I took no share in the discussions in which these Regulations originated. I avoided offering any opinion because I felt that it was impracticable within the time to which I must have been limited and under the pressure of my daily duty, to do tolerable justice to the subject. I will likewise acknowledge that I entertained a strong repugnance to enter into a private discussion of questions of such high public interest. The course pursued by the Government was, I am aware, adopted from the considerate motive of sparing the time of the Court. But supposing due consideration to be given to the questions, I do not perceive how any time could be saved by the Judges of this Court submitting their opinions in private. On the

 other

other hand there is always danger that the facility and want of responsibility attending that course may betray men into hasty superficial suggestions. Publicity, open discussion and the responsibility of official character, constitute a safe-guard against that inconvenience. But if there is no advantage in the opposite mode of procedure, the disadvantages are manifest. All the information and instruction which future Governments might derive from a public proceeding are lost. The authorities in England are kept in the dark with respect to the grounds and reasons of the most important arrangements. For the materials necessary to form their judgments, it is obvious that they must chiefly rely on the records of the Government; and if they are cut off from that authoritative source of information, their legal controul will be reduced to a mere name. It is moreover of the utmost moment that the Honorable Court should be enabled to make a proper selection to fill the seats in the Government, and it is in these public discussions that they will find one of the best means of appreciating the qualifications of their servants for high trust.

25.—The statement which I have given of our business further leads to the conclusion, that our difficulties in great part arise from the extent of our jurisdiction, and the great weight of important matters which inevitably devolve upon the Court—and I am the more solicitous to press this view of the subject, because I know that an opinion has been entertained even by the Government, that our arrears have arisen from our time being occupied by numerous petty trifling details:* and the special appeals have particularly been thought to be within the scope of the observation.

*Extract from Mr. Chief Secretary Dowdeswell's Letter of the 17th July 1813, in answer to a letter from the Register to the Sudder Dewany Adawlut, dated 28th June 1813.
"In the eighth paragraph of your letter in speaking of the miscellaneous duty of the Sudder Dewany Adawlut it is observed," that a general notion of this duty may be given by stating that with

26.—The opinion of Government expressed in the letter cited in the margin, appears to me founded upon an entire misapprehension of the passage which it quotes from our Register's letter of the 28th June 1813. The Government seem to have understood the passage as intimating that we allowed appeals in matters not being regular suits at the pleasure of the parties. We meant simply to state, that there was upon the rule and principles of the system a large mass of

miscel-

miscellaneous business, connected with the proceedings of the numerous Courts under our superintendence and controul.—The statement determined nothing as to the magnitude of the cases of which this business consisted.—The fact is as I have just observed that a Court with so enormous a jurisdiction and under a novel and unsettled system, must unavoidably be liable to a great quantity of miscellaneous duty; though the bounds to which it may be reducible, will always be a proper subject for consideration.—The Court has accordingly been relieved from time to time by the transfer and retrenchment of considerable portions of their business of this description.—At the period the Government wrote their letter, there were unquestionably some matters within our cognizance which ought to have been left to the final disposal of the lower Courts, but that cases of this sort existed to an extent which could in any considerable degree account for our heavy arrears, is a position to which I cannot assent.

the exception of appealed causes it involves the consideration of every question which can be brought before the Court respecting the proceedings of six Provincial Courts and forty two Zillah and City Courts exclusive of the foreign settlements." This passage tends strongly to confirm the apprehensions above expressed that the time and attention of the superior Courts are too much diverted from the hearing and deciding of cases of magnitude to matters of small importance,' which should be left to the final adjudication of the interior tribunals."

27.—The special appeals have doubtless occupied much of the time and attention of the Court; about three days in the month having been given to them by one Judge of the Court, but they form in my judgment one of its most serious duties.—They are founded on the indispensible necessity of giving the higher Courts, an opportunity of correcting deviations from law and principle, apparent on the face of the decrees of the lower Courts.—The extent to which the remedy should be allowed is a fair question.—And it has been contracted by the new Regulations.—They have also very properly provided some general rules for guiding the Courts, in determining upon the allowance of special appeals, taken chiefly from the practice of this Court.—The restriction must, I have no doubt, cause a reduction of these appeals—but the effect upon our general business will be little felt.

28.—Other causes might be pointed out as likely to operate a diminution of our business, but unfortunately there are equally causes of increase.—And on the whole I am satisfied that there is at present

no

no prospect of our being able to keep up our business and prevent further arrears.—This opinion is fully confirmed by our report on the civil causes depending in the several Courts, submitted to the Government on the 18th May 1815.

29.—Nor does there occur to me any practicable measure for limiting the business to our ability, while our present jurisdiction remains unaltered.—An obvious one is to raise the standard of causes regularly appealable; but to give us any substantial relief the limitation must be carried so far as hardly to leave us a Civil Court of Judicature.

30.—I conclude then that the only expedient means of rendering the Court efficient, is to add to the number of the Judges, or to transfer a part of its general territorial jurisdiction to a new Court.

31.—It is a decisive objection to the first of these measures, that it will be attended with a heavy augmentation of expence.

32.—*But I am of opinion*, that the second measure might be accomplished without that objection and by means that would effect great improvements in the administration of justice in the Upper Provinces, in addition to affording relief to this Court.

33.—My proposition is that the districts in the new Territory including Goruckpore, Allahabad and Bundelcund, be put upon a footing which may supersede the necessity of the Court of Circuit and Appeal; and that the Court of Circuit and Appeal be replaced by a Nizamut and Sudder Dewanny Adawlut, consisting of three Judges to be established in that country.

34.—The plan which I should suggest for the management of those districts, is that upon which the Residency of Benares was conducted before the province was brought under the general system of administration; with considerable modifications and amendments, however, calculated to combine the principles of a native administration with order, stability and justice.

35 —I propose that a resident shall be appointed to superintend all the affairs of the district, revenue, justice and police assisted by two covenanted servants and native officers, upon a respectable and liberal footing.

36 —That a Maal Adawlut shall be established in each district to be carefully organized on the revenue system of the country — That in this Court shall be settled all claims for rent, all complaints of undue exaction of rent, all disputed revenue accounts between Tehseeldars, Zemeendars, their sureties and mortgagees.—And all matters of account generally; that it shall determine all complaints relative to forcible dispossession of land, water and premises, and to the possession of estates left vacant by death or other cause. That all boundary disputes shall be finally adjusted in this Court —That the decrees of the Dewanny Adawluts comprehending matters of account or awarding possession of land, shall be executed in the Maal Adawlut. That resumptions of alienated land be also in the first instance decided in that Court.—That the partition of landed estates and the consequent apportionment of the Government revenue, be therein conducted—that this Court be superintended by a native Dorogha, to be assisted by the Canoongoes, treasurer and officers of the revenue, under the immediate controul of the Resident.

37.—That a Sudder Maal Adawlut shall be established and organized upon the same plan under the superintendence of the Board of Commissioners and Sudder Dewanny Adawlut.—That this Court shall be held before one Commissioner and one Judge of the Sudder Dewanny Adawlut —That in case of difference of opinion, another Judge of the Sudder Dewanny Adawlut be called in.—That the nomination of the chief revenue officers of the residency shall be made by the Resident to this Court.—That to this Court shall be allowed an appeal from the acts of the Resident in the Maal Adawlut, and redress given or if judged proper, a trial directed in the Dewanny Court.

That

38.—That a lower Dewanny Court shall be established at the station of the Residency, to be conducted by a native Judge with powers to proceed summarily in minor cases, and whose decisions shall be open, according to circumstances, to an appeal special or of course to the Resident.

39.—That the Resident shall hold a Dewanny Court for hearing appeals from the lower Court; and for trying the larger causes in the first instance.—Subject to an appeal regular or special according to circumstances.

40.—The Courts of the native commissioners to be discontinued and trifling civil cases including rents, to be adjusted summarily by Cauzees, Tehsildars, Canoongoes, Zemindars and by the principal persons in towns.—By this means there would certainly be a less formal and regular administration of justice in small cases.—But the people would be driven to settle their little disputes among themselves; and the mischiefs attending the numerous petty Courts scattered over the country with their knots of law intriguing retainers would be avoided.—In the new territory where it is to be hoped inveterate habits of litigiousness have not yet been generated, the people when thus left to themselves would naturally revert to their punchayets, of which unquestionably they made frequent use before our administration. All practicable methods should be resorted to with the view of supporting and encouraging these institutions.—The enactment of Regulation 6, 1813, I may observe, was no inconsiderable step to the attainment of this desirable end.

41.—The Foujdaree Court and the immediate charge of the Police and the criminal Jail, I should propose to place under the first assistant, subject to the general controul of the Resident.—In this department the first assistant should be assisted by the second assistant in receiving the reports of the Police Officers, and issuing orders thereon; in the superintendence of the Jail, and in taking evi-

dence

dence and making commitments. The time of the assistants should not be occupied with the trifling Foujdary cases which might be devolved upon the Mowlawee or Pundit of the station.

42.—The immediate charge of the Jail should be confided to the head assistant.—But the Resident should consider it an object of his unremitted attention and superintendence.

43.—The Resident should himself hold a Criminal Court, assisted by a Law Officer for the trial of offences of magnitude, including all those on which the sentence implies infamy. I would empower the Resident to acquit in all cases, and concurring with his Law Officer to sentence to corporal punishment by stripes and to imprisonment and banishment for seven years. In cases of difference with his Law Officer or his thinking the above punishment inadequate, I should require a reference of the trial to the Nizamut Adawlut.—The Resident should be obliged to refer as the Courts of Circuit are at present, all cases of perpetual imprisonment and capital punishment to the Nizamut Adawlut.

44.—The plan does not necessarily imply any change in the actual Police system.—But I should strongly recommend the confiding of the Police to the Tehsildars, and Zemindars and persons having influence in the towns and villages, allowing the Tehsildar's proper officers to hold inquests, draw out the necessary reports, and perform the other duties of detail. From such an arrangement would result a strong and unbroken chain of authority and dependence from the Resident down to the lowest servant of the Police, most efficacious for the preservation of the peace of the country.

45.—After this suggestion I need scarcely add, that I retain the sentiments fully expressed in the report which I addressed on the 6th May 1808, to this Court from the Benares Court of Circuit, on the weakness of a Police depending on Thannahs under Police Daroghas.

But

But I cannot deny myself the satisfaction of supporting my opinion by the respectable authority of Mr. W. Blunt, Superintendent of Police in the Western Provinces. That valuable officer with all the advantages which he possessed for forming ... ...dgment on the question, has in his report of the 31st May 1814, pronounced the utter inefficiency of that system in the new territory —Yet the Police establishments however inadequate to the immense space over which they are scattered, are very large —By a statement which I lately caused to be prepared in the office, I find that there are nine hundred and one Thannahs and Police posts on foot, including twenty two thousand peons in the immediate pay of the Government.

46 —In many of the frontier districts I should imagine, that a Police will be required, planned upon very different principles from that which may suffice for the rest of the country —It may deserve consideration whether in those districts a force might not be raised and organized from the tenantry upon the plan adopted in Mysore, as explained by Colonel Wilks, in his able report upon the administration of that country ; and described by him as constituting a most efficient and vigorous Police; with such a plan might be connected the important object of keeping up the little forts and defences of the towns and villages, which in the event of a hostile invasion, must often prove their chief security.—If an intelligent Military Officer could be spared to superintend the whole arrangement, it would be still more efficient.—The existence of a war arising out of border aggressions, tempted perhaps by the want of sufficient attention to the border, and the devastation to which the defenceless inhabitants of parts of our frontier were exposed after the war occurred, may be thought to give weight to these suggestions —An institution unfortunately interrupted by a State necessity, has been wisely and liberally founded by the Government, with a view to qualify their Military servants for trusts requiring a knowledge of the languages and manners of the people. And I should esteem it no light advantage if the measure which I

have

have ventured to suggest should bring to the aid of the Police, a portion of the merit and talents with which the Bengal army abounds.

47.—My final proposition is that the division of Benares Court of Circuit and Provincial Court of Appeal, be placed under the new Sudder Dewanny Adawlut, so that this Court may be relieved of the whole of the duties of that Province, and of the Ceded and Conquered Territory.

48.—The main object of the plan being to afford real and substantial relief to this Court, the degree in which it will effect that object is the first point for consideration.

49.—In the criminal department, the relief would be important. The total number of regular trials received by the Court during the year 1814, was, five hundred and forty-one (Appendix, No. 1,) of that number two hundred and five (Appendix, ditto,) which is nearly two-fifths came from the Benares and Bareilly Courts of Circuit.

50.—In examining the state of the civil file, a very different proportion is observable. The total number of appeals depending in this Court on the 31st December 1814, was four hundred and fifteen, of this number only twenty two came from the Bareilly Court of Appeal and fifty two from Benares, total seventy four out of four hundred and fifteen. This is somewhat more than one-sixth of the whole (Appendix, No. 4.) A statement of appeals admitted during the last six months (Appendix, No. 5,) exhibits however a higher proportion of causes from those divisions.—The total number admitted from all the Courts of Appeal being seventy-six; from Bareilly four, from Benares thirteen, that is from Benares and Bareilly seventeen, or nearly one-fourth of the whole.

51.—If these statements be compared with statements of the land revenue of the different territories, the result will appear very singular.—The land revenue of the districts included in the Bareilly

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division is Sicca Rupees 1,92,26356.; of the districts included in the Dacca, Calcutta, Moorshedabad and Patna divisions 2,88,19,069. Yet as I have shewn the number of depending causes appealed from the first of these territories is only twenty two;—while from the latter it is three hundred and forty-one—that is fifteen to one.—The land revenue of the districts under the division of Benares is 1,12,25,142 the depending appeals from that division fifty two; more than double the number of those from the Bareilly division. (Appendix, No. 6.)

52.—I am sensible that the improvement which must have taken place in the Lower Provinces since the permanent settlement, renders the land revenue no certain criterion of the relative wealth and populousness of these territories.—But no reasonable allowance to be made on this account, can be thought to explain the amazing disproportion between the civil business, which the different territories contribute to this Court.—There are indeed other obvious causes. The great distance from this Court must operate as a discouragement to appeals, more especially as the seat of the Board of Revenue for the new territory being on the spot, the landholders must be at the expence of a double set of agents for the management of their revenue and judicial concerns.—The inhabitants not having yet fully acquired the spirit and habits of litigation which are the sure growth of our judicial system, is unquestionably another cause.

53.—Still however explained, the fact remains; and the actual relief to the Sudder Dewany Adawlut in its civil department, from the adoption of the plan will be proportionably small.—But the relief in this respect would notwithstanding be of no slight importance both to the Court and the suitors, since including the growing arrear, I compute that there would be at once transferred to the new Court an arrear of about ninety appeals, while the greatest annual number ever decided by the Court is only seventy two.—The transfer would then in the first instance advance the Court one year in this department.—It would also relieve it permanently from the growing appeals from

those

those divisions, which, as noticed in paragraph 50, approached during the half year, ending with one thousand eight hundred and fourteen, to one-fourth of the whole.

54.—I must at the same time remark that the preceding calculation is grounded on the actual quantity of business arising from the Upper Provinces; if, as I think, there can be no doubt, it must be expected to increase rapidly, the operation of the plan must be in the same degree beneficial.

55.—The plan has further to take credit for the saving of the miscellaneous business connected with Benares and the new territory. Of this business, that which is judicial may be supposed to be nearly in proportion to the appeals—that is, about one-sixth of the whole.—The remainder depending like the criminal trials more on the motions and exertions of the Officers of the Government, than on the inclination or ability of the people, may probably bear the same proportion as the criminal trials.—On which supposition it will be more than one-third of our whole business of the same nature.

56.—If the data above given be at all accurate, I may venture to conclude, that the plan would remove from the Court about one-third of its present burthens; and thus render it, if its business should not increase, equal to its duties.—If, as I apprehend, there is too much cause to anticipate, the business should increase, the necessity for relief will be still more imperious.

57.—I may also observe, that the plan will oppose no obstacle to any future improvements in the administration of justice, which may be practicable within the jurisdiction, which I propose to leave to the Court.

58.—The foregoing is merely an outline of the plan which I venture to submit; but I trust, that I have sufficiently developed it to admit of an accurate judgment on its merits and defects.—To prosecute

cute it into further details until the principle of it is sanctioned would be premature. I by no means offer it as a final arrangement; but as economical, adapted to the present habits of the people, calculated to be efficient for the dispatch of business, and to combine order and tranquillity with a reasonable protection of civil rights. At a future period, when the inhabitants shall have been reconciled to legal regular Government, and more familiar with the forms of our administration, we may introduce any changes from the old territory to which the means of the Government may be equal, and which a comparison between the two systems may demonstrate to be improvements.

59.—I have proposed it as a necessary condition of my plan, that it shall not entail additional expence.—The annual charge of the police and judicial establishments under this Government is heavy, and there is in the present system a tendency to progressive growth of business, attended with progressive increase of expence.—During the last seven years not to speak of minor appointments, no less than ten new considerable judicial offices have been made; to wit, a fourth Judge of the Sudder Dewanny Adawlut, six additional Judges of the Courts of Appeal, two Superintendents of Police, and a second Judge and Magistrate for the Twenty-four Pergunnahs. And with these augmentations there is no reasonable ground for hoping, that the efficiency of the system has been ensured.—The same causes if not checked must infallibly operate the same effects in the new territory. —The districts in these provinces are in general, judging by the land revenue, far more extensive than those of the Lower Provinces; (Appendix, No. 6,) and if my supposition that the business of them must encrease be well founded, they must in course of time require additional British Officers. To meet, and if possible to check this multiplication of business, which has hitherto outstripped every effort to master it, and to oppose bounds to this constant increase of charge, is the great object of my plan.

60.—As I propose to supersede the Bareilly Provincial Court, consisting of four Judges, and further in consideration of the reduction

tion of the jurisdiction of the Benares Court of Circuit to take the Fourth Judge from that Court; there will be an ample fund for the expence of the new Sudder Dewanny Adawlut.—I do not venture to take credit for the reduction of one of the Judges of this Court.—This saving will probably be practicable at a future period, but in the face of our present arrears would be wholly inexpedient.—All the materials necessary for organizing the Sudder Maal Adawlut must already exist in the establishments and officers of the Board of Commissioners.

61.—In forming the Residencies I should proceed on the principle of limiting the expence of them to the amount of the actual charge and establishments of the districts.—This condition would allow, I trust of fixing the salaries of the Resident and his officers upon a liberal scale.—The Residents would of course be entitled to promotion in the Courts of Circuit and Sudder Dewanny Adawluts and Board of Commissioners; and their situation in the mean time would be so honorable as to make it an object of ambition to the most able and respectable of the servants.

62.—I shall now proceed to take a general view of the advantages which the plan promises and the objections to which it may be thought liable.

63.—I set out with stating, that the plan which I was about to suggest, would greatly improve the administration of justice in the Upper Provinces, in addition to the relief which it would afford to this Court.

64.—That those provinces will gain in a very high degree, by having a supreme criminal and civil Court placed in their centre, and adequate to the prompt and efficient dispatch of their business, substituted for a Court removed like ours to so enormous a distance, and so overloaded with arrears, I presume will not be contested.

65.—An important collateral advantage I have anticipated in noticing the inconvenience and expence—which the land-holders and

 others

others concerned in revenue business are exposed to, by the Board of Revenue and Supreme Court for the Upper Provinces,-being separated.—As my plan implies the establishment of these authorities on the same spot it would obviate this serious inconvenience

66.—Whether the country will gain by the change of system proposed for the districts is a question on which there will probably be much difference of opinion. That it will at least conduce to a more prompt and vigorous administration, I think cannot be doubted.—From the Maal Adawlut under a Resident holding the powers which I propose to vest in him, I should expect above all, the most signal advantages.—The fatal error of abolishing this Court, and all the ancient revenue offices of the country, upon theoretical views, has too late been seen and generally acknowledged. The deplorable consequences have been ably developed in the five Reports of the House of Commons, but the mischief is not there exposed to its full extent.—By an account of sales of land (Appendix No. 7,) for the public demand, made up in the office of the Board of Revenue, it appears that during the six years from the year 1203 B. 1796-7 E. when the system of one thousand seven hunderd and ninety three may be presumed to have come into full operation, down to one thousand two hundred and eight B. inclusive, lands in Bengal, Behar and Orissa were sold, the Jummah or Government revenue of which amounted to Sicca Rupees 1,04,93,594.—The total Jummah at the decennial settlement for those provinces was 2,68,00989.—so that lands bearing a Jummah greatly exceeding one-third, of the whole public rental were sold during these six years.—In the single year 1799-1800, the sales amounted to upwards of thirty eight lacs. This was the period at which the evil reached its height.—The Government unwilling to acknowledge the defects of their system had before ascribed it to the mismanagement of the land-holders.—But now a most alarming fall in the price of the lands brought to sale took place, and the public revenue was about to be involved in the general ruin of the proprietary. In the year 1796-7 E. lands, the

revenue

revenue of which amounted to Rupees 14,18,756-3-6.—sold for Rupees 17,90,417-13-6-2.—In 1799-1800 lands, the revenue of which amounted to Rupees 38,65,951,-9-17-1; sold for only Rupees 24,21,899-13-13. The truth could no longer be concealed; and Government hastened to correct its error by authorizing the most rigorous process against tenants. A summary process for the recovery of arrears of rent had previously been introduced in the years 1793 and 1795, but it was found to be inadequate and the rules to which I have referred were enacted by Regulation 7, 1799. Under the former rules the tenants had the power of defying and ruining their landlords; by the new rules the tenants were in a great measure given up, bound hand and foot, to the mercy of their landlords. There cannot be the least doubt that these mischiefs, the stupendous devastation of the landed interest and ancient proprietary and the subsequent oppression to which the Ryots have been subjected by the severe Regulation of 1799, might have been obviated by preserving the Maal Adawlut and the native revenue offices.

67.—The conviction of these truths has at length produced a very general opinion in favour of the restoration of the Maal Adawlut under the Collectors.—The measure has been actually proposed by this Court.—I was myself not prepared to unite in that recommendation.—It is easier to destroy than to repair.—Now that all the ancient revenue offices of the country are swept away, and the principle adopted of confiding the office of Collector to the least competent of the British servants, it would be vain to expect the same beneficial results from the institution in the Lower Provinces. In the Upper Provinces fortunately the means of making the institution efficient are much more at command; and I repeat that I should augur the most happy effects from it---agriculture there is the great occupation of the people---almost all their rights, and by consequence almost all the questions which can arise among them are connected with land and rent.---A Court possessed like the Maal Adawlut of the power and the ability to adjust satisfactorily and summarily the questions of this

nature

nature which must arise among the people, would prevent the greatest part of their differences being fomented into litigation.—For a more full exposition of the benefits which would result from this Court I beg to refer to a very judicious letter from the Judge and Magistrate of Allahabad, dated 12th August 1812, which I am happy to observe, has attracted the attention of the Court of Directors, being mentioned in their dispatch in the Judicial Department, dated the 30th September 1814.

68.—In the criminal department, some considerable benefits would attend the change of system.—The criminal Court would sit continually, and prisoners would not be detained as at present several months during the interval between the circuits; prosecutors and witnesses would likewise be spared the serious inconvenience of a double attendance at the commitment and trial.

69.—The objections to which the plan may be judged liable remain to be noticed.

70.—The advantage of having one Supreme Court for a country subject to the same government and to the same general system of laws, is not to be contested; and this is an obvious objection to the proposition for dividing the country between two Supreme Courts.

71.—But principles however just may be strained in their application; and when we consider the distance of the Upper Provinces from the seat of this Government, a case arises to which the principle would clearly be misapplied.—The trouble and expence to parties of following suits to such a distance; the delay of reference; the inevitable ignorance of all local circumstances; the impracticability of exercising a vigorous controul, constitute disadvantages which greatly outweigh the benefit of one united supreme judicial authority.

72.—It is also remembered that the Province of Benares and the new territory are under a system in many important respects different

from

from that of the lower Provinces, and that as I have noticed the chief revenue authority under the Government, has been removed from the Presidency and established in the centre of the new country.

73.—The districts in the Upper Provinces would however lose by the plan the advantage of their sessions being held twice in the year, by a Judge and Law Officer of the Court of Circuit, and the superior justice and impartiality with which this Court may be supposed to conduct the trials, compared with the proposed criminal Court under the Resident.

74.—Those districts would lose the further advantage of the correction of abuses and injustice, which the controul of the Court of Circuit exercised twice a year upon the spot may be presumed to effect.

75.—But in weighing this objection, it must be recollected that the practical disadvantages which may follow the discontinuance, is not to be estimated by the theory on which those Courts were established.

76.—The excellence of that theory I am far from contesting.—I fully admit the superiority of the system by which the trial of important criminal cases instead of being confided to the officer responsible for the peace of the district, is reserved to a higher tribunal, which must be free from all local bias and connections, and from which parties may by consequence expect with greater confidence, a cool and impartial judgment. Here however the merit of the design, as we have the pain to observe, in many of our institutions, forms a striking contrast with the imperfectness of the execution.—I trust not to be understood as casting a general reflection upon the Judges of Circuit, many of whom are exemplary for the zeal with which they perform their arduous functions.—But human nature in the gross must not be too heavily taxed.—The enormous length of the circuits in point of distance, from six hundred to one thousand miles, the impa-

tience of being deprived in a climate like this, for eight or nine months together of the comforts of home, the great quantity of the business, have too often led and must be expected to lead to a hurried conduct even of the trials, and to great remissness in the duty of controul.

77.—Viewing the matter in this light, it is only the sacrifice of an institution which circumstances prevent being rendered efficient.—Yet I am so friendly to the circuit, that I would willingly combine it with my plan but for the imperious necessity of avoiding additional expence. I have in consideration of that necessity, only proposed three Judges for the new Sudder Dewanny Adawlut.—By adding a fourth Judge to the Court and excluding two or three of the most remote districts from the circuit, it might easily be performed in the greatest part of the territory by the Judges of the Sudder Dewanny Adawlut.

78.—In the civil department of the districts, the chief innovation which I have proposed is the introduction of native officers on a respectable and liberal footing, to undertake a considerable portion of the business instead of devolving the whole of it, with trifling exceptions upon the British servants.

79.—To this proposition, however, I fear that I cannot expect favour.—I cannot disguise from myself that it continues to be the studious policy of the Government to reduce all their native officers to the lowest possible point of emolument and credit.

80.—In my Benares report to which I have already taken the liberty of referring, I have dwelled at large upon the mischiefs, which to my humble capacity appeared to flow from this source; and I hold it a solemn duty to declare that my sentiments have been confirmed by all my subsequent reflection and experience.

81.—On our national superiority in all the qualities which fit men to temper power with humanity and justice, I feel as an Englishman. ---But I can also discern bounds to that superiority.—I cannot think that

that for every purpose and in all circumstances a countryman, young and unexperienced as it must often happen, often from our limited numbers, inferior in natural capacity, must perforce surpass the natives, whom we may still select, and whom we might have had greater opportunities of selecting, if our system had extended to our native subjects a moderate portion of the honours and rewards to merit and integrity which it secures to the British servants.

82.—We have attempted suddenly to imitate in these Provinces, even the refinements of those institutions, which matured by the experience of ages and strengthened by the spontaneous aid of all ranks of a free and enlightened community maintain security, order and equal justice in our native land. Reflecting upon the wisdom of the illustrious founder of the system, it has often amazed me, that he should not have foreseen the certainty of its failure, from the unequal means to which he trusted for its execution. A glance at the municipal organization of England will satisfy us that some thousands of respectable and intelligent men (I speak without exaggeration) are employed in the principal duties of police, and in the administration of justice. The total number of British servants under this Government, dedicated to the police, and the administration of civil and criminal justice, may be stated at one hundred and fifty.—Without the fiat of one of these officers, no individual among the swarming millions of these extended and populous regions, can be put on his trial, be sentenced to suffer an hour's imprisonment or a single stripe :---In civil matters the same sanction is required to make a judgment final to the amount of a rupee.

83.—And it must be carefully remembered that even this handful of British officers cannot be selected for their talents and qualifications. —This formidable obstacle to good administration arises from causes most difficult to controul.—If the offices of India were laid open to the competition of all British subjects, it is evident that the most dangerous abuse of patronage might be expected to follow from the

operation

operation of the influence, which from the nature of our free constitution is found essential to conduct the Government at home.—Electioneering and party interests would predominate over appointments in India, and the colony be the victim of the struggle for power in the parent state.—To exclude these dangers the British Legislature have deliberately given the monopoly of office in India to a body of servants.—The individuals of this service are appointed at an early age, they dedicate the best portion of their lives to it, and their rise is subject to limitations which at least ensure officers of considerable experience, who must have some knowledge of the languages and manners of the people, and more or less skill and practice in the duties which they are called on to fulfil. By this arrangement the operation of patronage in civil appointments is prevented to a degree which would not at first sight be easily conceived, considering the number and value of the offices reserved to the civil service.—These advantages are unquestionably great; but it cannot also be concealed that they are purchased at a high price.—The young men who enter the service are not originally chosen for their capacity;—and if they could be, we all know the fallaciousness of the promise of that early age. Then, after they commence their career their situation prevents in a great measure their feeling the powerful stimulus to exertion which springs from men's consciousness that their success in life depends on their own efforts.—The offices of the service are spread before them as a sort of heritage to which they are adopted on the condition of very slight acquirements.—In effect the system necessarily keeps the number of servants about equal to the offices—all therefore are secure of employment.—The abundant and eminent examples of ability and zeal which the service has furnished in such circumstances, are most honorable to it as a body.—But they cannot redeem the inherent defects of the system.—In spite of every palliative which can be devised, the Government must often continue to be reduced to the painful necessity of placing men in situations of the highest trust, who cannot be selected for their fitness.

As

84.—As the great mass of business would far transcend the efforts of the judicial officers, even upon the supposition of their being all of approved ability, the aggravation which must result from the inefficiency of many of them is obvious.—This in particular is the source of that want of confidence which multiplies checks and controuls and devolves so many irregular details upon the superior authorities. The sure effects of these causes in a stoppage of the whole machine I ventured several years ago to foretell; and after every expedient which could be resorted to, many of them highly prejudicial to the administration of justice, the state of the Courts, the superior Courts more especially, but too well justifies the prediction.

85.—It is in these defects and obstacles that we must trace the constant fluctuation of our measures and the deplorable sufferings which have visited our native subjects, under the operation of the original system and under every corrective of that system which the wisdom of the Government has hitherto enabled them to apply.—To dwell on these evils is a painful and mortifying task; but too pregnant with instructive lessons to be neglected; and it may be above all salutary should it tend to abate that confidence in the ability of our Government to secure the happiness of its subjects with its present means and upon its present system, which has been a chief source of all former evils and while it continues must perpetuate them.—To indicate the real causes of former miscarriages, to ascertain our strength and our weakness, must be the first step to any solid amelioration.

86.—The operation of the system upon the proprietary interest and the great body of the tenantry, I have already been led to notice.

87.—The noble mind of the venerable founder fondly cherished the grateful belief that the permanent settlement would prove the Æra from which to date the prosperity of the Zemindars, and all classes of subordinate tenants. The melancholy contrast of the actual result I have already shewn.—The enormous sales and consequent ruin of the proprietors during the first six years which followed the settlement

 have

have been justly characterized as constituting the greatest and most sudden revolution of property which perhaps ever happened by the mere effect of internal regulations.—If however this calamity had redounded to the benefit of the great body of the tenantry, that reflection might have afforded some consolation.---But the entire ruin of the Zemindars and of the public revenue was averted by measures which are now universally acknowledged only to have shifted the evil and to have subjected that class of men to the most grievous and destructive abuses. The consciousness of this truth produced in 1812, another important change, involving a mitigation of the severe process against tenants introduced in 1799.—(See Regulation 5, 1812.)

88.—In the department of the police the review is no less mortifying. For a very long period our unhappy subjects have been the victims of atrocities of which language could offer only a feeble portraiture; and these horrors have been most prevalent in districts which are in a state of high cultivation, which have been longest under the British authority, and are nearest to the metropolis of the empire.—Gang robbery has at length been much suppressed, but it will be readily conceived that great sufferings must have been inflicted on the community by the violence of the means which have been employed to accomplish an end in itself so important. The extraordinary powers which the public officers will exercise in such a crisis, the zeal and heat of the Magistrates to put down the mischief excited by the strongest motives which Government could hold forth, the unnatural activity of a corrupt native police, the wide scope afforded to spies and informers, the play given under cover of these operations to malice, revenge, cupidity and all the worst passions which lacerate society, the anxiety of the Courts to prevent great criminals escaping; this combination of causes must have engendered a mass of crime, distress and misery unquestionably only inferior to the original calamity. The number of prisoners in our jails may be regarded as furnishing some criterion of the magnitude of the evil and of the effects of the remedy. —They amount to twenty-five thousand, five thousand of whom, who

cannot

cannot be convicted of any specific offence are condemned to perpetual imprisonment, unless they can give security for their good behaviour.—Upon the moral operation of these fearful vicissitudes, or their tendency to break the spirit and to corrupt and degrade a people, I forbear to enlarge.—The consideration must appal every mind capable of a right judgment.—(Appendix, No. 8).

89.—I am aware that the suppression of decoity has been thought to reflect high credit on our administration. But the real state of the case as I have represented it, will surely warrant far different feelings. It will furnish on the contrary the most irresistible proof of our failure to secure to our subjects the blessings of internal peace, order and steady justice. The tardy success of a great Government over banditti by exertions of its strength which shook society to its foundations, can be no worthy theme for triumph. Granting that this terrible cure was necessary, it was yet a necessity for which we have to account—And we have moreover to answer for the misery of the people during the long series of years which elapsed before these enormities reached a height too horrible to be further palliated or endured.

90.—The review of the state of the civil business in our Courts is not more consolatory.—Another heavy abatement from the merit claimed in the improvements of the police is, that they have been accomplished at the expence of the most serious injury to civil justice.—In too many of the lower and in almost all the superior Courts, the load of arrears entails the most oppressive delay; and the pressure of criminal business as I have clearly shewn with respect to this Court, has been a principal cause of the evil.—The reduction of these arrears will be a long and arduous work, towards the success of which I fear no essential means have yet been adapted.

91.—The effects which the same causes are likely to operate on the interests and character of the civil service, also merit the most serious consideration. --It will lead, as it is fast leading, to a multipli-

cation

cation of inferior offices for the civil servants, greatly disproportioned to the higher stations.---Thus a few years back the arrears in the Zillah and City Courts produced the appointments of assistant Judges, that is of a civil servant to exercise the duty of a Judge on much worse pay. The assistant Judges have been discontinued, but by Regulations, 16, 1810, and 24, 1814, offices upon the same principle have been constituted both in the civil and criminal departments denominated joint and Assistant Magistrates and additional Registers and Registers with special powers, many of whom form in fact Subordinate Judges and Magistrates placed at a station distinct from the Judge and Magistrates with their separate Courts, prisons and establishments.---The number of these officers appointed to distinct stations already amount to nine, five of whom are additional Registers. There is a loud and continual call for their increase; and I have no doubt that considerations of economy alone have prevented the number from being greatly augmented.---If I am not misinformed, a large addition to the nomination of writers has been recommended to the authorities at home, probably with reference to these appointments.---The prejudicial effects of such a system upon the interests of the individuals coming into the service is too evident, from the present state of promotion, notwithstanding advantages which can never be expected to recur.---If not timely attended to, it may terminate in bringing out men to the civil service to remain in the country for life, or to redeem themselves from that doom by means fatal to the character of the service, and to the honour and best interests of the state.

1 Bareilli,
2 Benares City,
3 Cuttack,
4 Mymensing,
5 Dinagepore,
6 Moorshedabad,
7 Bhangelpore,
8 Allahabad,
9 Etawah.
The first 5 of the above jurisdictions at the time I write, have additional Registers.

92.---There is to be sure an alternative between the employments of the British covenanted servants in what may be called the secondary as distinguished from the higher and petty offices under the Government, and the employment of natives in these offices, which I advert to, because the Government have already adopted a measure tending to that alternative.---I refer to Section 54, Regulation 23, 1814, by which provision is made that the Zillah and City Judges in

selecting

selecting individuals to fill the office of Sudder Ameen, shall not be restricted to persons of any particular class or religious persuasion.---By the former rules these officers must have been Musselmans or Hindoos.

93.---The terms of this provision are so large as to include not only European British subjects of all descriptions, but foreigners of all countries and the children of Europeans and foreigners, and it is to be regretted that in making an enactment so novel in its principle and so wide in its scope, the Government should have omitted to explain their views, or to lay down any rules to guide the discretion of the Courts of Appeal to whom these appointments are by the same regulation transferred from this Court.

94.---But the chief effect of the new rule will probably be to introduce into the administration of justice, the children of British European subjects by native mothers.

95.---Upon the expediency of this innovation, certainly a very important one in its principle, I shall not venture to offer an opinion. The race in question are the people of colour of our Eastern empire; and to the most careless eye are multiplying with a rapidity which renders it already prudent to think of the policy upon which they should be treated.---In favor of employing them in our administration, it is obvious to remark that they may far more easily than natives be fashioned to a system founded so much on European notions.---On the other hand it must be expected considering their origin, that they would gradually gain the preference over natives. If therefore the affections of our native subjects merit any regard, it is manifest that they must be still more deeply wounded by seeing the poor remnant of power and emolument left them by our own monopoly torn from them to be given to our offspring of this description.

96.—The maxims of our rule when first the valour and fortune of our countrymen made this splendid acquisition were to govern it by a few British officers holding stations of great emolument, power

 and

and state; leaving the internal administration with its mass of business and details in the hands in which they were found at the conquest, and of course to be conducted upon the principles of native Government.—Europeans not in the service of the Government, were jealously excluded from the interior of the country.—This system secured to the British all political authority and the entire command of the resources of the state; rarely exhibiting them at the same time otherwise than as invested with power and environed by splendour.—It was thus well calculated to maintain the awe and dignity of the British name; while by participating with natives of rank and influence, a considerable share of authority and emolument; and avoiding interference with the customs and institutions of the people, it tended to conciliate and to soften the odium naturally attendant upon the sway of strangers. It has accordingly had many advocates, and among them the respectable voice of Mr. Francis.*.

*See the publication by this Gentleman called "original minutes, on the settlement and collection of the Revenues of Bengal." Edition 1782, P. 29.

97.—The opposite system is to establish as far as practicable European maxims of Government and justice; to subvert the usages and institutions of the country; to introduce Europeans and their descendants by native women bred in their manners, customs and religion into all offices to the exclusion of natives; and finally to encourage the settlement of Europeans in the interior of the Country. —To suppose that a Government conducted on these principles can be welcome to a nation would be contrary to all experience of human nature.—It must therefore rely on the passiveness of its native subjects, or upon gradually acquiring by the multiplication of Europeans and their descendants, adequate strength to secure itself against opposition.

98.—At present we seem to be fluctuating between the two systems—which of them should be preferred—whether a just medium between them be attainable, are high and important questions, which I leave to those whose ability and leisure better qualify them for the discussion.—I have merely stated them as shewing that the fundamen-

tal

tal principles of our eastern internal Government are perhaps yet unsettled; and that until they shall be fixed, difficulty will always be experienced in deciding upon the various plans of administration which may be proposed.

99.—In closing this paper it becomes me to express my deep sense of the imperfect manner in which it has been executed. To perform it as its importance merited, would have required a considerable period of unbroken leisure.—It has unavoidably been written in the scattered hours which I could command from our laborious duties and under the continued oppressive consciousness of the utter inadequacy of all our efforts to answer the claims of the public to our services.—I have in consequence been compelled to offer a very summary and general view of many topics which demanded lengthened discussion.—I am sensible that in these circumstances I should better have consulted my personal credit by remaining silent.—But our business has reached a crisis which constitutes so urgent a call on the Judges of this Court to contribute their assistance towards a reformation, as appeared to me to leave no alternative. If my plan should not be found to merit approbation, it may at least furnish assistance in determining upon a better arrangement and my labour will then not have been wholly unprofitable, but I will once more repeat my conviction, that the case has proceeded beyond the reach of palliatives; and that decided measures have become indispensable.—I will only add, that whatever errors I may have fallen into have not proceeded from an overweening confidence. It may, perhaps be the fault of a narrow capacity; but to establish in these provinces a system at once, energetic and just, combining order and efficiency with that protection to individuals which is the sole legitimate end of all constitutions, has always appeared to me an object so arduous, that I have been accustomed to consider the mind which can entertain light opinions of its facility to be wholly unfitted for the task.

(Signed) JAS. STUART.

A True Copy,

M. H. TURNBULL,

Register.

APPENDIX.

No. 1.—Statement of Criminal trials received and decided by the Nizamut Adawlut, from the year 1799 to 1814, inclusive.

No. 2.—Statement of Civil causes received and decided by the Sudder Dewanny Adawlut, from the year 1799 to 1814.

No. 3.—Statement of the number of Criminal trials received from the divisions of Benares and Bareilly Courts of Circuit, from the year 1802 to the year 1814, shewing the districts in which they arose.

No. 4.—Statement of the causes depending in the Sudder Dewanny Adawlut, on the 31st December 1814, shewing the number appealed from the several Courts respectively.

No. 5.—Statement of appeals admitted in the Sudder Dewanny Adawlut in the last six months of 1814, shewing the numbers received from the several Provincial Courts of Appeal.

No. 6.—A Statement of the land revenue of the Lower Provinces, Benares and the New Territory.

No. 7.—Statement of sales of land by public auction on account of arrears of the Government revenue, from 1203 B. corresponding with 1796-7 E. to 1212 B. corresponding with 1805-6 E. inclusive.

No. 8.—Minute of Mr. Stuart, Third Judge of the Nizamut Adawlut, upon the half yearly report of prisoners, dated the 30th June, 1815.

A True Copy,

M. H. TURNBULL,

Register

No. 1.

Statement of Criminal Trials received and decided by the Nizamut Adawlut, from the year 1799 to 1814, inclusive.

			No. of Trials received.		No. of Trials decided.
1799	....	....	144	1799	141
1800	....	....	124	1800	113
1801	....	....	156	1801	149
1802	....	....	122	1802	121
1803	....	....	111	1803	103
1804	....	....	264	1804	233
1805	....	....	192	1805	208
1806	....	....	191	1806	198
1807	....	....	189	1807	166
1808	....	....	238	1808	189
1809	....	....	346	1809	288
1810				1810	
Regular trials,		484	499	Regular trials, 436	442
Miscellaneous ditto,		15		Miscellaneous ditto, 6	
1811				1811	
Regular trials,		512	549	Regular trials, 466	512
Miscellaneous ditto,		37		Miscellaneous ditto, 46	
1812				1812	
Regular trials,		485	601	Regular trials, 651	686
Miscellaneous ditto,		116		Miscellaneous ditto, 35	
1813				1813	
Regular trials,		556	656	Regular trials, 452	578
Miscellaneous ditto,		100		Miscellaneous ditto, 126	
1814				1814	
Regular trials,		541	602	Regular trials, 512	612
Miscellaneous ditto,		61		Miscellaneous ditto, 100	

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Register.

No 2.

Statement of Civil causes received and decided by the Sudder Dewanny Adawlut, from the year 1799 to 1814

	No of Causes received.				*No of Causes decided.*		
1799	....	....	41	1799	....	....	51
1800	....	....	40	1800	....	....	37
1801	....	....	17	1801	....	....	69
1802	....	....	26	1802	....	....	41
1803	....	....	39	1803	....	....	68
1804	....	....	37	1804	....	....	51
1805	....	....	58	1805	....	....	31
1806	....	....	65	1806	....	....	67
1807	....	....	84	1807	....	....	60
1808	....	....	58	1808	....	....	55
1809	....	....	60	1809	....	....	25
1810	....	....	77	1810	....	....	18
1811	....	....	102	1811	....	....	45
1812	....	....	64	1812	....	....	53
1813	....	....	124	1813	....	....	72
1814	....	....	166	1814	....	....	69

A True Copy,

M. H. TURNBULL,

Register.

No. 3.

Statement of the number of Criminal Trials received from the Divisions of Benares and Bareilly Courts of Circuit, from the year 1802 to the year 1814, shewing the Districts in which they arose.

	1802	1803	1804	1805	1806	1807	1808	1809	1810	1811	1812	1813	1814	Total.
Benares City, ...	7	2	3	8	0	7	6	0	36	9	14	10	9	111
Mirzapore, ...	0	0	3	0	2	1	5	0	4	14	9	23	11	72
Allahabad, ...	0	0	6	3	2	2	7	1	7	19	14	11	10	82
Bundelcund, ...	0	0	0	0	4	0	9	1	5	10	11	15	10	65
Juanpore, ...	2	0	2	4	2	6	4	1	8	15	5	9	10	68
Goruckpore, ...	0	2	1	2	2	1	2	1	7	3	5	9	11	46
Bareilly, ...	0	4	19	13	9	3	3	13	24	18	24	28	17	175
Cawnpore, ...	0	2	6	2	3	2	2	7	4	12	11	7	11	69
Furruckabad, ...	0	1	7	0	2	7	1	1	7	10	9	4	4	53
Etawah, ...	0	2	19	2	2	2	1	1	2	33	20	20	12	116
Agra, ...	0	0	0	0	1	3	4	5	7	12	11	18	24	85
Allighur, ...	0	0	0	0	3	2	2	10	13	26	12	26	26	120
Southern Division Seharunpore, ...	0	0	0	0	7	4	5	1	1	6	5	1	13	43
Northern Ditto Ditto, ...	0	0	0	0	0	0	0	0	0	5	6	1	8	20
Moradabad, ...	0	3	10	8	0	2	2	6	5	10	22	10	29	107
Grand Total.	9	16	76	42	39	42	53	48	130	202	178	192	205	1232

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Register.

No. 4

Statement of the Causes depending in the Sudder Dewanny Adawlut, on the 31st December 1814, shewing the number Appealed from the several Courts respectively.

Dacca Court of Appeal,		....	....	77
Moorshedabad,		....	....	45
Calcutta,	....	....	....	85
Patna,	....	....	....	130
Benares,	....	....	....	52
Bareilly,	....	....	....	22
Chinsurah,	....	....	....	4
				415

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No. 5

Statement of Appeals admitted in the Sudder Dewanny Adawlut, in the last six Months of 1814, shewing the numbers received from the several Provincial Courts of Appeal.

CIVIL CAUSES.

Depending 1st July, 1814,	....	369
Received in last six Months,	....	76
		445

VIZ.

From the Bareilly Provincial Court of Appeal,				4	
"	Benares,	ditto	ditto,	13	
"	Calcutta,	ditto	ditto,	14	
"	Dacca,	ditto	ditto,	15	
"	Moorshedabad	ditto	ditto,	7	
"	Patna,	ditto	ditto,	23	
				76	445
Decided in last six months		....	....		30
Depending 1st January.		....	....		415

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No. 6.

A Statement of the Land Revenue of the Lower Provinces.

DISTRICTS.			*Jumma or demand on account of 1813-14, corresponding with 1220 B. S. with the five last months of 1220, and the first seven months of 1221 F. S.*			
BENGAL PROVINCE.						
Hooghly and Burdwan,	....	....	43,24,072	1	1	1
Chittagong,	....	....	5,85,588	15	1	3
Dacca,	....	....	12,88,406	2	13	0
Dinagepore,	....	....	17,56,373	14	17	3
Jessore,	....	....	11,97,072	8	1	2
Moorshedabad,	....	....	18,70,534	8	2	2
Mymunsing,	....	....	7,57,550	10	12	3
Nuddea,	....	....	11,91,058	1	10	2
Purnea,	....	....	10,35,789	14	15	2
Rajeshahye,	....	....	14,70,592	15	15	3
Rajemehal,	....	....	56,986	6	2	2
Rungpore,	....	....	11,24,668	15	6	2
Sylhet,	....	....	2,91,355	15	5	2
Tipperah,	....	....	11,34,932	14	18	3
24 Pergunnahs,	....	....	12,47,577	6	8	2
		Total,	1,93,32,561	6	14	0
BEHAR PROVINCE.						
Behar,	....	....	17,44,914	4	6	1
Bhaugulpore,	....	....	3,82,678	14	5	0
Dhurumpore,	....	....	2,44,756	4	0	1
Sarun,	....	....	14,10,053	1	5	0
Shahabad,	....	....	11,23,676	7	8	1
Tirhoot,	....	....	12,44,686	12	2	2
		Total,	61,50,765	11	7	1
ORISSA PROVINCE.						
Hidgellee,	....	....	2,91,464	3	18	1
Midnapore,	....	....	14,91,240	3	5	1
		Total,	17,82,704	7	3	2
		Grand Total Sicca Rupees.	2,72,66,031	9	4	3

Statement of the Demand Receipts, and Balances of the Land Revenue of the District of Benares, for the Fussilly year 1221.

	Jumma of 1221 F. S				Collections. Collections from October 1813 to September 1814.				Collections. Collections from October to December 1814.				Total Collections.				Balance on the 1st January 1815.			
Benares B. Rupees.	12,67,916	2	0	0	40,06,989	1	11	0	1,84,591	10	7	0	41,91,580	11	18	0	76,335	7	14	0
													Deduct Rissions,				6,216	7	14	0
													Net Balance.				70,118	14	8	0

A Statement of the Jumma of the Land Revenue, of the several Districts of the Ceded and Conquered Provinces, including Cuttack and Bundelcund.

DISTRICTS.		Jumma of 1221, F. S. agreeably to the Collectors Hal Towjees', Accounts.			
CEDED PROVINCES.					
Allahabad,	....	28,01,915	7	10	0
Bareilly,	....	23,57,996	2	9	0
Cawnpore,	....	27,15,080	3	6	0
Etawah,	....	30,62,068	4	9	0
Furruckabad,	....	10,50,946	0	0	0
Goruckpore,	....	17,75,377	2	9	0
Moradabad,	....	26,01,921	0	6	0
Shahjehanpore,	....	11,46,165	1	6	0
	Total Lw. Rs.	1,75,11,469	7	7	0
CONQUERED PROVINCES.					
Agra,	....	14,25,238	5	5	0
Allyghur,	....	31,52,309	2	4	0
Seharunpore,	....	25,79,817	11	3	0
Bundelcund,	....	28,85,065	7	1	0
	Total Lw. Rs.	1,00,42,430	10	1	0
Cuttack,	.... Sa. Rs.	14,86,670	1	0	0
Puttaspore,	....	66,368	8	3	0
	Total Sa. Rs.	15,53,038	9	3	0

Grand Total,				
Ceded Provinces, Lucknow Rupees,	1,75,11,469	7	7	0
Conquered Ditto, ...	1,00,42,430	10	1	0
Lucknow Rupees,	2,75,53,900	1	8	0
Sicca Rupees,	2,63,67,368	0	0	0
Cuttack and Puttaspore Sicca Rupees,	15,53,038	9	3	0
Total Sicca Rupees,	2,79,20,406	9	3	0

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M. H. TURNBULL,

Register

No. 7.

Statement of Sales of Land by Public Auction on Account of Arrears of the Government Revenue, from 1203 *B corresponding with* 1796-7 *E. to* 1212, *B. corresponding with* 1805-6 *E. inclusive.*

	Jumma of Lands actually Sold.				*Gross amount of the Sales.*			
1796-7								
1203								
Bengal,	11,16,161	4	11	0	15,36,154	11	8	0
Behar,	55,008	11	6	0	91,855	1	18	2
Orissa,	2,47,586	3	9	0	1,62,408	0	0	0
	14,18,756	3	6	0	17,90,417	13	6	2
1797-8								
1204								
Bengal,	21,11,378	10	16	2	19,47,006	3	19	1
Behar,	1,00,652	7	3	1	1,58,570	8	0	0
Orissa,	61,218	14	7	0	41,613	0	0	0
Benares,	826	4	0	0	391	1	5	0
	22,74,076	4	6	3	21,47,580,	13	4	1
1798-9								
1205								
Bengal,	36,14,802	9	12	3	22,30,038	15	5	2
Behar,	1,16,336	6	1	2	1,30,696	13	7	2
Orissa,	81,425	13	18	0	45,632	3	0	0
Benares,	53,386	12	5	0	15,531	14	0	0
	38,65,951	9	17	1	24,21,899	13	13	0
1799-1800								
1206								
Bengal,	6,47,091	5	13	1	4,43,898	2	19	2
Behar,	58,036	3	0	1	1,58,119	8	0	0
Orissa,	61,475	4	18	0	45,748	0	0	0
Benares,	11,365	15	6	0	6,450	0	0	0
	7,77,967	12	19	2	6,54,215	10	19	2
1800-1								
1207								
Bengal,	11,29,861	15	13	3	10,60,801	11	19	3
Behar,	8,744	10	13	1	9,443	0	0	0
Orissa,	56,248	8	0	0	74,310	0	0	0
Benares,	3,631	0	0	0	3,625	0	0	0
	11,98,486	2	7	0	11,48,179	11	19	3

	Jumma of Lands actually Sold.				*Gross amount of the Sales,*			
1801-2								
1208								
Bengal,	9,05,306	7	4	2	7,41,892	1	4	0
Behar,	65,545	5	6	0	55,741	8	0	0
Orissa,	56,713	8	11	0	67,866	0	0	0
Benares,								
	10,27,565	5	1	2	8,55,499	9	4	0
1802-3								
1209								
Bengal,	3,93,671	13	10	2	4,16,813	15	4	2
Behar,	1,19,362	15	13	3	1,54,737	0	0	0
Orissa,	64,771	11	18	0	43,356	0	0	0
Benares,								
	5,77,806	9	2	1	6,14,906	15	4	2
1803-4								
1210								
Bengal,	2,48,978	9	8	2	2,76,919	13	1	3
Behar,	2,73,956	2	15	0	2,36,467	0	0	0
Orissa,	5,675	5	12	0	7,593	0	0	0
Benares,	30,377	6	10	0	17,977	0	0	0
	5,58,987	8	5	2	5,38,956	13	1	3
1804-5								
1211								
Bengal,	2,08,051	0	3	3	1,76,060	9	12	2
Behar,	81,034	7	18	0	92,532	0	0	0
Orissa,	35,418	4	9	0	75,584	0	0	0
Benares,	5,834	11	10	0	9,822	0	0	0
	3,30,338	8	0	3	3,53,998	9	12	2
1805-6								
1212								
Bengal,	1,00,210	15	2	0	81,649	7	3	3
Behar,	31,903	0	15	0	40,335	0	0	0
Orissa,	2,161	6	6	0	3,954	0	0	0
Benares,	1,463	8	1	2	3,950	0	0	0
	1,35,738	14	4	2	1,29,888	7	3	3

As the same Land would sometimes be re-sold and the Proprietors sometimes bought in their own Land at the Public Sales, allowance must be made for these circumstances in considering the effect of these Sales on the proprietary interest, but I conceive not in any

 degree

degree to effect the general argument; on the other hand, the pressure on the land-holders must have compelled many of them to transfer portions of their Estates by private alienations.

A True Copy,

M. H. TURNBULL,

Register.

No. 8.

Minute of Mr. J. Stuart, 3rd Judge of the Nizamut Adawlut, upon the half yearly Report of Prisoners; dated 30th June, 1815.

1.—The Register having laid before us the report of prisoners confined in the several jails, I am concerned to observe that the number of those detained on failure to give security for their good behaviour, amounts to the serious number of 6180; of which, about 5-6th, that is 4983 are ordered to be imprisoned until they find security indefinitely; in these last mentioned cases, the order may obviously amount to perpetual imprisonment.

Par. 2. "The Governor General in Council regrets to observe the great number of prisoners, amounting to 6086 who are stated to be confined until they find security for their good behaviour; of that number, 1792 appear to be confined at Nuddeah. The Governor General in Council on adverting to the late prevalence of gang robbery, is sensible of the circumspection which should be observed in releasing persons of bad or suspicious character from confinement in any part of the country, and more especially in Nuddea, which was late

2.—So long ago as the year 1813, this important matter excited the observation of Government, who in a letter from Mr. Chief Secretary Dowdeswell, dated 12th February 1813, of which an Extract is given in the Margin, desired the Court to furnish their sentiments respecting the relief which could be afforded to this class of prisoners.

3.—The Court have never been able to comply with that call; no general or summary mode of relieving these prisoners having been suggested to them from any quarter, or having occurred to themselves.

4.—The Court remark that these prisoners consist of two principal divisions, 1st, those ordered to give security by the Nizamut Adawlut and Courts of Circuit; and 2d, those ordered to find securi-

ty

ty by the Magistrates; the number under each class are stated in the margin.*

5.—By the Court's circular order of the 8th August 1807, the Magistrates were directed to lay before the Judges of the Courts of Circuit at the half yearly Sessions, a list of all prisoners in confinement under the Magistrates requisition for security, that the Judge of Circuit might on consideration of the cases, give such relief as he judged proper, either by reducing the amount of the security ordered, or by releasing the prisoners.

6.—It follows that no prisoners are detained in confinement for security who have not been directed to furnish the same by this Court, or the Court of Circuit, or who having been held to security by the Magistrate, his order has not been confirmed by the Court of Circuit.

7.—By the circular order which I have cited, the Courts of Circuit were directed to confine the order for indefinite detention, to cases where prisoners were notorious decoits, or liable to strong suspicion of gang robbery.

8.—Under these circumstances it is manifest that no persons have been indefinitely confined for good behaviour, but those who in the judgment of this Court and the Judges of Circuit, were fit objects of that restraint as decoits, or men strongly suspected of decoity.

9.—That this rule of detaining men notorious for decoity or strongly suspected of robbery until they give security is erroneous, is certainly I believe not thought by the Government.

10.—On the contrary, since the communication of the 12th of February 1813, the Government have strongly expressed their opinion

ly one of the principal seats of those disorders; but the detention of so many persons unconvicted of the actual commission of any crime, is in itself so serious an evil, that it appears to merit the particular consideration of the Nizamut Adawlut. His Lordship in Council is accordingly desirous of being furnished with the sentiments of the Court respecting the relief which can be afforded to this class, of prisoners consistently with the future peace and tranquillity of the Country.

* This is the number of prisoners of every description, the number of those confined for security was 1057.

1. Of dangerous character to be confined indefinitely till security be given, by order of

Nizamut Adawlut,	797
Court of Circuit,	1568
Magistrate,	2618
	4983

2. To be discharged without security at the end of a limited period, by order of

Nizamut Adawlut,	88
Court of Circuit,	323
Magistrate,	786
	1197

Par. 2. The Governor General in Council observes that no

on of the expediency of that Rule.—On the 30th May 1814, Mr. Chief Secretary Dowdeswell, transmitted a Report from the Superintendant of Police for the Lower Provinces, in which that officer attempted to show in figures, that the number of decoities committed in particular Districts, was in the inverse ratio of persons confined for security. The Government appear to have adopted the Superintendant's opinion; and his report was obviously sent us for the purpose of impressing us with the caution requisite in interfering with the system; I have given an Extract of Mr. Chief Secretary Dowdeswell's letter in the Margin.—On a very recent occasion Government have professed the same sentiments.—I refer to Mr. Acting Secretary Bayley's letter of the 28th of March last, communicating the resolutions of the Government on the Circuit report of Mr. Ker, the late 2d Judge of the Bareilly Court of Circuit; an Extract of this letter is also placed in the Margin.†

11.—But if the Rule itself is right, the number of persons confined according to it, though it must be acknowledged to be a dreadful evil, must still be considered as a necessary one.

12.—Admitting even that any additional Rules can be devised to realize the desire of the Government of securing regularity and preventing abuses in the exercise of this discretionary authority, it is obvious that such Rules could not operate to relieve the prisoners now in confinement, unless indeed a general revision of their cases should be undertaken in conformity to the new Rules; and when the state of the Courts is referred to, the difficulty of such an operation with respect to five thousand cases need not be dwelled on.

13.—Another ground on which the cases of these prisoners actually in confinement may appear to require consideration, is the supposition that a proportion of them is irregularly detained, not in conformity to the Rule.

For,

branch of the police and of the administration of criminal justice, is attended with greater difficulty than the question noticed in these paragraphs. The beneficial effects which have arisen from the detention in confinement of persons of suspicious or notorious bad character, can scarcely be disputed.—On the other hand, it is manifest that if great circumspection be not observed in the exercise of this power, innocent persons may be frequently subjected to indefinite, perhaps perpetual imprisonment. The Governor General in Council is not prepared to determine that the Rules and practice as they at present exist can be amended, but he has deemed it necessary to forward the observations contained in Mr. Shakespear's letter to the Nizamut Adawlut for their information and consideration, in any discussions of this nature which may take place at the Court.

11. † The Vice President in Council entirely coincides with the Nizamut Adawlut in considering the power of calling on persons of dangerous character to enter into security for their good conduct to be essentially necessary for the protection of the community; it is understood that the existing Rules on this subject have not been uniformly construed in the same manner by the subordinate ju-

14.—For, concluding the truth of that supposition, I fear we shall find too many reasons, when we recal to mind the circumstances under which these prisoners have accumulated; the state of the country, the anxiety of Government to repress decoity, the activity into which the Magistrates have in consequence been stimulated, the crowds of persons seized and detained, the precipitation with which many of these cases must have been disposed of; the general leaning of the Magistrates against all persons suspected of decoity.

dicial authorities; and the Vice President in Council is desirous of receiving from the Nizamut Adawlut any suggestions which in their judgment may be calculated to secure regularity, and to prevent abuses in the exercise of this discretionary authority, without at the same time endangering the peace and safety of the public."

15.—In so unhappy a crisis, the Magistrates will find it difficult to hold steady the balance between the protection of the community from violence and the safety of innocence; their humanity itself inflamed by the atrocities which are perpetrated, will become enlisted against the individuals. A strong personal interest, will upon the common principle of human nature, help the bias; the Magistrate being held responsible by the Government for the peace of his district; conscious that his official character, his promotion depend upon his success, there must be often great danger, that he will think too much of the end, and too little of the means.

16.—The malice and interested views of individuals will too likely prompt them to avail themselves of such a state of things; many of the prisoners were sent in by the land-holders, and their agents, and kept many months in close custody before they could obtain a hearing.—If they eventually cleared themselves from suspicion, those who caused their detention, were probably seldom held responsible. What a source of undue influence this may have been, to a class of men whose direct influence, the Government consider so pernicious, it is easy to conceive.

17.—The difficulty of controul at such a time is unfortunately in proportion to the tendency to abuse; the duty of revising the proceedings of the Magistrates in these cases, I have observed fall upon the Judges of Circuit at the Sessions, but when the length of their

circuits, and the weight of their other duties are considered, it will not be matter of surprise that the numerous security cases laid before them by the Magistrates have not been examined with the care which the juncture rendered so indispensable.

18.—In a considerable proportion of the cases, as I have shewn, the order for holding to security has been passed by this Court and the Courts of Circuit, in the first instance, and chiefly by the Courts of Circuit—the circumstances which have attended those cases, must also I fear lead to the conclusion, that the order for finding security, has often not been passed with sufficient care.

19.—This power is vested in the Courts of Circuit by Clause 6, Section 2, Regulation 53, 1803, which authorizes the Judge of Circuit acquitting a prisoner to order him to be held to security upon strong suspicion, or upon proof of notorious bad character.—There appears to me great danger that in the serious and difficult cases which come under the cognizance of the Courts of Circuit, they may have often been tempted to fly to this alternative of security, in preference to the more arduous course of forming a clear opinion upon the guilt, or innocence of the prisoner after a patient investigation.—When this happens the doubts which probably remain on the Judge's mind of the prisoners innocence, and the little importance which he is apt to attach to the order to give security, compared with the awful consequence of conviction, are likely to lead to the too easy admission of the proof against the prisoner's character.—Several cases have been before us which have confirmed me in this belief.

20.—If the preceding observations are of any weight, they unquestionably point to a general revision of the cases under our consideration, as the only means of extending relief to the prisoners; but the magnitude of the operation I have already noticed, and I confess that I am at a loss to suggest any mode in which it could be ac-

complished

complished. To appoint Judicial Officers of competent ability and experience, specially to undertake this delicate and arduous duty, seems to be the only expedient; and I cannot be insensible of the obstacles which exist to adopting this suggestion.—If the duty of a general revisal were to be imposed on the Judges of Circuit at the Sessions, the circuit would be indefinitely protracted: If imposed on the Courts of Circuit at the Sudder Station, it must cause the most serious impediments to the civil business, which has for some years been in a great degree sacrificed to criminal justice and police. —Either of these plans of revision would also I have no doubt cause a heavy addition to the burthens under which this Court labours.

21.—The communications which I have quoted from the Government, shew that they are fully aware of the difficulties, inherent in the subject, and they have probably never entertained any sanguine hope, that the general manner in which they recommended it to our attention, could lead to any satisfactory result.

22.—But though unable to suggest to Government any general plan for the relief of these prisoners, I must remark that the subject, as may be supposed, had attracted our notice before the reference was made by the Government, and that we have embraced every opportunity which has offered itself of granting relief to individuals; of impressing the Magistrates, with the necessity of circumspection in the exercise of the power, and of exciting the Courts of Circuit, to the exercise of the controul with which they are vested.—Some of the Judges of those Courts have likewise shewn a very laudable attention to this branch of their duty; by these means the still greater accumulation of these prisoners has been at least prevented, but I regret to observe that there is no diminution; the actual number being somewhat higher than at the period the matter attracted the notice of Government.

23.—To Nuddea where the numbers have been highest, particular attention has been and continues to be paid; and I am happy to say with good effect, the number which on the 30th June 1813, was so high as one thousand two hundred and thirty-four was on the 31st December last, only eight hundred and six.

24.—But while this decrease has taken place in one district, a great and sudden augmentation is to be observed in another. On the 30th June 1814, there were only forty-seven prisoners in the jail at Tipperah, under the order of the Magistrate to give security, or to be confined indefinitely; on the 31st December last, there were three hundred and ninety-six prisoners of this class, and the increase has unhappily been attended with a great mortality in the jail, falling chiefly on these prisoners. This matter is at present under our consideration, and is another strong instance to shew the difficulty which this Court and the Courts of Circuit must experience, in attempting to follow and controul the activity of the Police.

25.—In our resolutions on the report of the late Second Judge of the Bareilly Court of Circuit, we intimated that we have for some time had it in contemplation to take the subject generally into our consideration, with a view to propose Rules for limiting and regulating the power of holding to security. As the Government in consequence of this intimation may expect a further communication from us, and as an anxious consideration of the matter has since impressed me with the conclusion, that little is to be effected by new Rules, it appears to me desirable, if the Court should coincide with me in opinion, that we should embrace the opportunity of sending up the Report, to apprize Government, that we have no proposition to offer beyond the suggestion above offered, of a special commission.

26.—The observations contained in the 19th Paragraph of this paper, if, at all founded, may indeed appear to call for a modification

of

of Clause 7, Section 2, Regulation 53, 1803, divesting the Courts of Circuit and even this Court, of the power of ordering an accused person to give security, after an acquittal upon a specific charge. This alteration if adopted, may be inserted in the first regulation respecting criminal matters, which we shall have occasion to propose to the Government.

27.—I may, I believe, venture to conclude by observing that if our efforts to check and subdue the evil have been so ineffectual, our failure has not arisen from the want of a due sense of its magnitude, whether the state into which the country had fallen has rendered the enormous accumulation of this class of prisoners necessary, or whether, as I am myself, for the reasons which I have given, inclined to think, it has been carried beyond that necessity, the consequence must equally awaken the most painful reflections in every mind at all anxious for the welfare of the native community, or interested in the honour and character of the British Administration.

(Signed) JAS. STUART,

A True Copy,

M. H. TURNBULL,

Register,

BENGAL SECRETARIAT LIBRARY

To W. B. BAYLEY, *Esq. Secretary to Government in the Judicial Department.*

SIR,

Sudder Dewanny Adawlut. } I AM directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 23d August last, enclosing Copies of the 2d and 5th paragraphs of a letter from the Hon'ble the Court of Directors, under date the 10th April, 1816; and acquainting them, that the Right Hon'ble the Governor General in Council is desirous of receiving as early as practicable, the report required from them on the 23d August 1815, on the arrangements suggested in a previous letter from the Hon'ble Court, dated the 9th November, 1814.

2. Under the discretion left to the Court of Sudder Dewanny Adawlut, in the concluding paragraph of your letter of the 23d August 1815, the several Provincial Courts of Appeal and Circuit, and the Judges and Magistrates of two districts in each division, viz.

Alligurh, & Barelly, ...	Barelly Division.
Benares & Bundlecund, ...	Benares Ditto,
Cuttack and Hooghly, ...	Calcutta Ditto,
Mymensing and Tipperah, ...	Dacca Ditto,
Rajshahye and Rungpore, ...	Moorshedabad Ditto,
Patna City and Sarun, ...	Patna Ditto,

were on the 23d November, 1815, furnished with printed copies of the letter from the Hon'ble Court of Directors, dated 9th November, 1814, and desired to communicate any remarks and suggestions that might occur to them on the subjects therein discussed.

3. On the 4th September last, in consequence of your letter of the 23d August, such of the Provincial Courts and Judges and Magistrates, as had not answered the reference made to them, were again called upon to expedite the reports required from them.

4.

4. Several of those reports are still wanting, and the Court are desirous, if it meet the concurrence of his Lordship in Council, of postponing the communication of their sentiments on the various important measures suggested by the Honorable the Court of Directors, until they shall have before them the observations of the whole of the local authorities, whom it appeared advisable to consult.

5. As however, it may be the wish of Government to put the Hon'ble Court in possession of what has been received on the subject, I am directed to request you will lay before his Excellency the Governor General in Council, Copies of the following papers.

No. 1. Letter from 2d Judge of the Barelly Provincial Court, dated 12th June, 1816, with Minute of the 4th Judge of that Court.

No. 2. Letter from Senior Judge of the Benares Provincial Court, dated the 3d March, 1816, with Minutes of Mr. Fortescue, the Officiating Judge of that Court.

No. 3. Letter from Officiating Judge of the Moorshedabad Provincial Court, dated 14th October, 1816.

No. 4. Letter from Patna Provincial Court, dated the 15th October, 1816.

No. 5. Letter from Judge and Magistrate of Zillah Cuttack, dated the 2d October, 1816, with statement of original suits and appeals pending.

No. 6. Letter from Mr. Ewer, late Judge and Magistrate of Zillah Mymunsing, dated the 20th September, 1816.

No. 7. Letter from the Judge and Magistrate of Zillah Rajshahye, dated the 25th January, 1816.

No. 8. Letter from Mr. Douglas, late Judge and Magistrate of the City of Patna, dated the 26th February, 1816.

No. 9. Letters from the Judge and Magistrate of Zillah Sarun, dated 11th April, 20th and 25th May, 1816, with their respective enclosures.

No. 10. Letter from the Judge and Magistrate of Zillah Bundlecund, dated the 9th November, 1816.

No. 11. Letter from the Judge and Magistrate of City Benares, dated 21st October, 1816, with its enclosure.

I am,

Sir,

Your obedient humble Servant,

M. H. TURNBULL,

Register.

FORT WILLIAM,
6th December, 1816.

To

To The Honorable GEORGE DOWDESWELL, Esq.

Vice-President in Council.

Honorable Sir,

In addition to the Papers submitted to Government on the 6th December 1816, relative to the general letter from the Honorable Court of Directors in the Judicial Department, under date the 9th November 1814, we have now the honor to transmit Copies of the following; viz.

No. 1. Letter from the Bareilly Provincial Court, dated 4th December, 1816, with a Minute from the Senior Judge of that Court.

No. 2. Letter from the Judge and Magistrate of Zillah Allighur, dated 23d March, 1817.

No. 3. Letter from the Judge and Magistrate of Zillah Bareilly, dated the 10th April, 1817.

No. 4. Letter from the Provincial Court for the Division of Benares, dated 15th March, 1817.

No. 5. Letter from the Calcutta Provincial Court, dated 20th March, 1817, with a Minute from the Senior Judge of that Court.

No. 6. Letter from the Judge of Zillah Hooghly, dated 25th February, 1817.

No. 7. Letter from the late 2d Judge of the Moorshedabad Provincial Court (now Senior Judge of that Court,) dated 13th March, 1817.

No. 8. Letter from the Judge and Magistrate of Zillah Rungpore, dated 8th March, 1817.

No. 9. Letter from the Judge and Magistrate of Zillah Tipperah, dated 6th March, 1817.

2. The Dacca Provincial Court, and some of the other Judicial Officers, who, on the 23d November, 1815, were furnished with Copies of the letter from the Honorable Court of Directors, (received by this Court on the 18th of that month,) and desired to communicate any observations, or suggestions, they might have to offer, on the subjects therein discussed; have not yet furnished the reports required from them, though called upon, a second time, on the 19th February last.*

3.

* The answer of the Dacca Provincial Court, dated 4th December 1817, has been received since the draught of the first part of this report was prepared; and a copy of it is submitted, No. 10.

3. But we do not consider it necessary or proper to postpone, for a longer period, the report desired from us, in Mr. Secretary Bayley's letter of the 23d August, 1815, viz. of the sentiments of this Court, " on the expediency, and practicability of adopting the several alterations, either specifically suggested, or generally alluded to, by the Court of Directors, for modifying the system at present in force for the administration of Civil and Criminal Justice, and for the controul and management of the Police, in the territories, immediately dependent on this Presidency."

4. That our sentiments on these points may be submitted with the requisite precision, and perspicuity, we shall, in the first instance, state concisely the arrangements and measures which appear to be either directed, or suggested, by the Honorable Court, under the general heads of *Civil Justice*, *Police*, and *Criminal Justice*.

Civil Justice.

5. Under this head, it is proposed (Paragraph 2 to 90, and the letter to the Government of Fort St. George, therein referred to,)

Paragraph 43 to 62 of letter to the Governor General in Council, dated 9th November, 1814; and Paragraph 58 to 62 of letter to Government of Fort St. George, dated 29th April, 1814.

First. That the Munduls, or other heads of villages, assisted by the Village Putwarries, and at the desire of parties, by a Punchayet, or Native Jury, be empowered to take cognizance of Civil claims, against the inhabitants of their respective villages, for rights and property of small amount; and to decide the same finally, or subject to appeal to a Native Commissioner.

Ditto and paragraph 63 to 71, of letter to Fort St. George.

Secondly. That the Village Munduls, and other heads of villages, or at the option of parties, Punchayets assembled under their authority, be also empowered to act as arbitrators, in Civil cases of larger amount, voluntarily brought before them, for award; and that the decision of the arbitrators, in such cases, be final, except on proof of corruption or partiality. No stamp duty, or fees, to be payable in any of the suits cognizable by the Village Courts.

Ditto and paragraph 67 to 71, of letter to Fort St. George.

Thirdly. That a certain number of villages be placed under the jurisdiction of a Civil Court, to be superintended by a Native Commissioner, with a fixed salary, in addition to the established Institution fee. That about four Commissioners of this description be stationed in each Zillah (including one at the station of the Zillah Court;) and that they be empowered to take cognizance of Civil suits, for an amount or value, not exceeding two hundred Rupees; subject to an appeal to the Zillah Court, in cases above twenty Rupees, and tried in the first instance by a Native Commissioner. In appeals from decisions of the Village Courts, the judgment of the Commissioner to be conclusive, unless there appear to be ground for a special

special appeal. But in all original suits and appeals, a Punchayet to be assembled by the Commissioner, at the desire of the parties.

Fourthly. That the Native Commissioners, and the Punchayets assembled by them, be likewise authorized to act as arbitrators, in cases voluntarily submitted to them, without limitation of amount, or value, and that the award given in such cases be final, unless corruption or partiality be established.

Ditto ditto.

Fifthly. That a stricter limitation be established, of appeals from the decisions of the Zillah and City Courts; and particularly, that special appeals only be allowed to the Provincial Courts from decrees of the Zillah and City Judges, passed on appeals from original judgments of their Registers, or of the Native Commissioners.

Paragraphs 61 and 62 of letter to Governor General in Council, and paragraph 27, of letter to Government of Fort St. George.

Sixthly. That the forms of pleading, proceeding, and process, in the Civil Courts, be revised, with a view to their being rendered as summary as may be compatible with the ends of substantial justice. The reply and rejoinder may perhaps be dispensed with,—and it may not be necessary to take down in writing all depositions, which are delivered orally in open Court.

Paragraphs 24, 25 and 26, of letter to Fort St. George, referred to in paragraphs 63 and 64, of letter to Governor General in Council.

Seventhly. That the employment of licensed Pleaders in the Civil Courts be maturely considered, with a view to the possibility of devising a remedy for experienced abuses, attending this establishment.

Paragraph 26, of letter to Government of Fort St. George, referred to in paragraph 64 of letter to Governor General in Council.

Eighthly. That the expenses of a trial in the Zillah and City Courts be reduced, if thought too considerable.

Paragraph 67, of letter to Governor General in Council.

Ninthly. That the Collectors, and other Revenue Officers, be employed in the settlement of disputes respecting land rent, between landholders, and their immediate under-tenants, and between the latter and the Ryots, including complaints by the latter of undue exactions; "subject to the revisal of the regular Courts of Justice by way of appeal, in cases of sufficient importance."

Paragraph 68 to 81, of letter to Governor General in Council.

Tenthly. That disputes respecting boundaries be also brought within the jurisdiction of the Collector; with the option of a Punchayet, when desired by the parties; and that all decisions and awards, passed in such cases, be duly recorded in the Village and Pergunnah Registers.

Paragraph 82 to 86, of letter to Governor General in Council.

Eleventhly. That measures be taken for enforcing an observance of the Regulations enacted respecting Pottahs, for the mutual benefit of landholders and their tenants, by rendering their respective rights and obligations more certain; and thereby

Paragraph 87 of letter to Governor General in Council and paragraph 10; to 108 of letter to Fort Saint George.

thereby facilitating the adjustment of disputes between them. The rules in force relative to distraint for arrears of rent, to be also revised and amended, with a view to prevent oppression of the Ryots, by an exercise of the power of distraint without judicial process—And the superintendence of the whole of this important concern to be vested in the Collectors.

Paragraph 88 to 90, of letter to Governor General in Council.

Twelfthly. That the powers formerly exercised by Sirdars, Chowdries, Mangies, and other heads of professions, be revived, under proper modifications—And that encouragement be given by the regular Courts, under such controul as may appear requisite, to the settlement of disputes or complaints, respecting caste and discipline, through the medium of the spiritual heads of tribes or classes, assisted by Peramanicks, in the accustomed modes of the country.

Paragraph 66, of letter to Governor General in Council.

6. It is further noticed for consideration, under the head of Civil Justice, "whether it would not be a very desirable measure, and one which could be effected at a small expence, to form a separate Sudder Dewanny Adawlut, for which two Judges, a Register, and assistant, with a proportionate Native establishment, would be amply sufficient for getting through, with due care and deliberation, the important duties of that Court."

Police.

Paragraph 133, of letter to the Governor General in Council.

7. The proposed arrangements, under this head, may be stated, as follows.

First. "That measures be taken for the gradual establishment throughout the country, of an efficient Village Police, properly maintained, and provided for; which shall be placed under the orders and controul of the Company's Magistrates, and be subject to such rules and regulations, as on a reference to the Zillah Judges and Collectors, may be found best calculated to answer the purpose of such an arrangement; and as may at the same time, have reference to the former practice of the Country."

Paragraph 134 to 136, of the same letter.

Secondly. That the charge and superintendance of the Police be transferred from the present Magistrates to the Collectors.

Paragraph 137, of ditto.

Thirdly. Where Tehsildars are retained, that their agency, as far as practicable, be employed between the Collector as Magistrate, and the Village Police.

Paragraphs 138, 139, of ditto.

Fourthly. That the existing establishments, under Police Darogahs, be also continued for the present, to be gradually reduced as circumstances may justify it.

8. The policy of again employing any of the Zemindars in the management of the Police, within the boundaries of their respective estates, is referred to the determination of the Governor General in Council, with a remark that it is left to his consideration, "whether means might not still be devised for obtaining the co-operative service of these Zemindars, in each Zillah, who possess a local influence within it, and who, if they could be brought to lend their voluntary aid, in the preservation of the public peace and security, could not fail essentially to promote that important purpose." Paragraph 140 to 146.

9. It is at the same time, added, "that whether it be found expedient, or not, to entrust the Zemindars with the authority of Police Darogahs, it certainly is so, that they be made responsible, under severe penalties, for giving information of public offenders." The Hon'ble Court therefore highly approve the provisions for this object in Regulations IX, 1808, I, 1811, and III, 1812. Paragraph 147.

Criminal Justice.

10. The first and second of the following propositions are considered by the Hon'ble Court, under the head of Police, as being "within the judicial cognizance of this Department." But they appear to be more strictly connected with the general administration of Criminal Justice, and are therefore here included under this head.

First. That for the more effectual redress of injuries, sustained from petty offences, such as calumny, abusive language, slight trespasses and inconsiderable assaults, and for restraining the perpetration of such offences, as well as for discouraging false and unjustifiable prosecutions, in cases of this description, a more extensive agency be established for the trial of such charges, than now exists, or can be furnished from the European branch of the Public Service. In what manner this can be accomplished most unexceptionably, by the instrumentality of Natives in the minor concerns of Criminal Judicature, is left to the consideration of the Governor General in Council, with a suggestion only, "whether the Native Commissioners of a superior order," whom the Honorable Court "have proposed to establish for the administration of Civil justice, might not also be authorized and required to act" in the Criminal Department. Paragraph 148 to 161.

Secondly. That questions of marriage, adultery, fornication, and perhaps rape, be made cognizable by the spiritual heads of tribes, before proposed to be encouraged. Paragraph 162.

Thirdly. As the most effectual means of remedying the serious grievance to parties Paragraph 167.

parties and witnesses, attending the present mode of trial before the Court of Circuit, that the Collector, in his future capacity of Zillah Magistrate, try and determine the cases which are now cognizable by the present Magistrates, and that the latter, as Judges of the Zillah Criminal Courts, be vested with judicial powers in cases of greater magnitude, not being of a capital nature.—The Zillah Judge to be aided by the Mowlavee and Pundit of his Court, and to proceed invariably upon the trial, immediately on the Magistrate's commitment. In cases of a certain magnitude, his sentences to undergo the revision of the Court of Circuit.

Paragraph 168. *Fourthly.* That in the principal Cities, the functions of Judge and Magistrate be continued in the hands of the same person, as heretofore; but with the same extended power, for the trial of Criminal offences, as is proposed to be given to the Zillah Judges.

Paragraph 177. *Fifthly.* That a discreet and sober exercise of the discretion to confine persons under requisition of security for good behaviour, be pointedly enforced upon the Magistrates; and that it be considered by the Circuit Judges, a primary object of their duty, at every jail delivery, to call for the report directed in Section XI, Regulation LIII, 1803, with a view to the discharge of any prisoners, confined beyond a twelve month, under inability to find security, whom it may appear proper to release, on a penal engagement.

Paras. 178 to 180. *Sixthly.* The practice observed by Mr. Bayley, when magistrate of Zillah Burdwan, in the release of prisoners of suspicious character, (viz. giving them in charge to the Village Gomastahs, Munduls, and Chokeedars, with injunctions to afford them every means of procuring an honest maintenance, but not to allow them to be absent from the village at night, without notice of their intention, and to give information at the Thannah in the event of their associating with persons of bad repute, and ceasing to labour, or to obtain an honest livelihood,) is at the same time, strongly recommended by the Honorable Court, with an intimation, that they expect to see it adopted in other Zillahs, when the village authorities are brought into action in aid of the general Police of the Country.

Paragraph 183. *Seventhly.* That an inquiry be instituted in the Departments of Criminal Justice and Police, with a view to revise the present regulations and forms, and to combine, as far as possible, the expeditious and effectual dispatch of business, with regularity and correctness of proceeding.

Paras. 184, 185. *Eighthly.* That attention be also given to the form of protestation upon oath, which witnesses cited before the Courts of Judicature, are required to observe in giving

giving evidence, with a view to obtain the testimony of persons of all gradations, in the mode most consentaneous with their ideas and prejudices, as well as most likely to be binding upon their consciences.

11. The foregoing abstract comprises, we believe, the substance of the several measures adverted to, in the letter from the Honorable Court of Directors, upon which our sentiments are required, and we shall now proceed to state what has occurred to us, on due consideration of the reasons assigned for them respectively, and of the remarks and information which have been communicated to us by the Provincial Courts of Appeal and Circuit, and by the Zillah and City Judges and Magistrates, whom it was thought advisable to consult under the discretion given by the last paragraph of Mr. Bayley's letter, dated the 23d August, 1815.

12. The argument for empowering the village Munduls, or other heads of villages, with the aid of Punchayets, to take cognizance of Civil claims of small amount, (in pursuance of the arrangement first stated,* under the head of Civil Justice,) is summed up by the Hon'ble Court of Directors in the 56th paragraph of their letter to the Governor General in Council, under date the 9th November 1814, in the following words. "It will bring home the administration of justice to the very doors of the parties; and thus relieve them, and particularly the common Ryots, from that expense, and vexation, and sometimes, ruinous loss of time, to which they are now subject, when they seek judicial redress. The Mundul and Punchayet will have the means of information much more within their reach than they can possibly be, when the investigation is not conducted by those residing on the spot; it is bottomed on the institutions and usages which have for many ages been well known and familiar to the minds of our Native subjects, whose peculiar characteristic, as we have more than once had occasion to remark, consists in the fixed attachment to what has been long established among them, and an aversion equally rooted to what partakes of novelty or infringes on ancient custom.

13. The Honorable Court further remark, (Paragraph 55,) "In proposing, as we do, that the adjustment of Civil disputes, and other questions of right and property, should be committed to the heads of villages and Punchayets, we do not, by any means, regard the principle as free from the possibility of abuse; no system that can be devised, for a purpose so extensive in its nature, can be so considered; but the question with us is, whether the ends of justice amongst a great population (which after all, must be executed through the Natives) would not be more substantially obtained by that, than by any other mode."

14.

* See Paragraph 5.

14. That the general administration of Civil Justice, in cases of inconsiderable amount, among the inhabitants of the populous and extensive Provinces subject to this Presidency, cannot be effected, or attempted, without the agency and assistance of the Natives themselves, or without vesting them with judicial powers, as well as those of arbitration, is, we think, incontestable. On this point, we entirely concur in the sentiments expressed by the Honorable Court; and that, with reference to the impossibility of any adequate augmentation of the European Courts of Judicature, the important object of providing for the due administration of Civil Justice, "can only be accomplished in any satisfactory degree, by extending, as far as may be necessary, to meet the wants and necessities of the people, the instrumentality of the Natives in conducting this branch of internal regulation."

15. But, it is justly added by the Honorable Court (paragraph 43,) "in what mode and to what extent, the Natives can with the most effect and advantage be employed in the administration of Civil Justice, is the question which now presents itself;" and whilst we fully admit, what is further stated by the Honorable Court, to be their deliberate conviction; viz. "that no arrangement for this purpose can proceed on a right principle, nor operate satisfactorily, in the fulfilment of its aims, which has not a reference to the ancient and long established customs and institutions of the country, and which does not accommodate itself to the habits, the feelings, and the understanding of those for whose benefit it is designed;" we at the same time entertain considerable doubt, whether, in the actual state of this part of India, and with reference to the circumstances hereafter stated, the constitution of Village Courts, as proposed, would be practicable and expedient.

16. It is remarkable that amongst the number of Judicial Officers, who were invited to communicate any remarks and suggestions that might occur to them on the letter from the Hon'ble Court of Directors, (copies of which were sent for their information,) not one has expressed an opinion in support of this part of the proposed arrangements.—But, on the contrary, several have stated their sentiments, or suggested plans, in opposition to it.

17. A qualified opinion is indeed offered by the Senior Judge of the Calcutta Provincial Court, (Mr. Wintle,) that petty disputes between Ryot and Ryot might be settled by such authorities as those proposed; but he seems to intend a voluntary reference to arbitration, without the recognition of any judicial powers; and expresses himself, (in the 8th paragraph of his Minute, dated 20th March 1817,) as follows:—"To remedy the inconveniences and evils pointed out, our Honorable Masters suggest the employment of the Natives in the administration of Justice.—This no doubt would be a desirable mean, could proper agents, and a sufficient number of

them

them, be obtained. But unfortunately the "ancient and long established customs, and institutions of the country," alluded to, have disappeared, and are rooted up.—The Natives have so long been in the habit of resorting to our Courts, that I doubt whether many could be found, who would submit to the authorities suggested. Munduls, Mocuddums, and Gomastahs, still exist; and Punchayets might also be formed. Petty grievances, disputes, abusive language, &c. between Ryot and Ryot, might be settled by such authorities.—But it is evident, that the acts of Talookdars, Farmers, Naibs, &c. from which most litigations arise, could not well be investigated by such a jurisdiction as the one proposed; being a higher order of persons than those who would judge them.—The assistance derivable from such a source would therefore afford a very limited aid. Those sort of authorities, though formerly customary, never possessed any recognized legal power to enforce their decisions;—and, as formerly, a resort to them must still rest upon the option of the parties."

18. The Senior Judge of the Bareilly Provincial Court (Mr. Hawkins) has recorded his sentiments on the Village arrangement referred to, in the following terms:* "With respect to the first of the above expedients, proposed by the Honorable Court, I am of opinion that, even if practicable, it would not be safe; nor if Native Commissioners, with the powers of Moonsiffs, be appointed to each Police jurisdiction, would it be at all necessary to adopt it. I argue the impracticability of the measure from the infinite number of villages in each District, and the impossibility of exercising a due control over so many thousands of petty tribunals.—I consider it unsafe, because, amongst the inhabitants of villages, who (in these Provinces at least) are, in general, excessively poor, there can be hardly any Civil litigations, but those about rent of land, which could only be between the Zemindar, farmer, or under-farmer, on the one part, and the cultivators on the other; in the decision of which, impartiality could not reasonably be expected from the head Mundul, Mokuddum, or Gomastah, and the Putwaree; as it would obviously be their interest to favor the former of the two parties, that is, the Zemindar, farmer, or under-farmer; and thus the poor Ryots would become worse off than ever, were such Village tribunals established. All such suits for balances or exactions of rent, had better, I conceive, be decided in the first instance by the nearest Moonsiff, if the amount claimed do not exceed one hundred Rupees; or by the nearest Sudder Aumeen, if the amount claimed be above one hundred Rupees, and do not exceed two hundred and fifty; or by the Zillah Court, if the amount claimed exceed two hundred and fifty Rupees.—For the appointment of a sufficient number of Moonsiffs and Sudder Aumeens in each District, ample provision has already been made by Regulation XXIII, of 1814, enacted on the 29th November of that year."

19.

* Par. 2 of his Minute, dated 2d December, 1816.

19. The Judge of Zillah Sarun (Mr. J. B. Elliott) who has written more at large, than any other officer, upon the whole of the proposed arrangements, in his observations upon Civil Jurisprudence, dated 1st May 1816, adverting to part of the Honorable Court's letter on this subject, remarks as follows. "From paragraph 42 to 61, are taken up with inculcating the necessity of an increased recourse being had to Native agency, the decision of causes by arbitration and Punchayet, &c. &c. "After fully considering the subject, I am sorry to be compelled to observe, that the remarks in question appear to me equally injudicious in the selection of persons in whom this confidence is to be reposed; and defective in general reasoning, as applicable to the existing state of things under this Presidency.—For in the first place, with respect to those selected as qualified to execute the duties of arbitration, or Punchayet,—the Putwarry, and the Gomastah, are in every instance necessarily the servants of the Zemindars, whom it would seem highly unjust to deprive of the appointment of persons employed in keeping the accounts, and collecting the rents of their estates.—The Mundul, Mokuddum, or Jeth Ryot, is also a person holding his situation at the pleasure of the Zemindar.—But being the servants of the Zemindar, they are, in my opinion, very unfit persons to be entrusted with any power of a judicial nature."—It is admitted, in Paragraph 13, how "feeble is the protection which the present Judicial Code has afforded, or can, in the nature of things, afford to the Ryots, against the injustice and extortions of the Zemindar;" and many subsequent Paragraphs are occupied in describing the evil consequences of their turbulent spirits in causing affrays, &c. &c. It would therefore, I should think, be extremely injudicious to add to their power, by enabling them in any degree, to influence the course of justice. Generally speaking, no reasonable objection can be offered, or has ever, to the extent of my knowledge, been offered, to allowing the parties to decide their differences by Punchayet, by arbitration, or in short by any mode which may be most agreeable to them.—But why enact any Regulation on the subject? The common sense of the people, and the good old immemorial usage so much applauded, are amply sufficient to induce the people to apply to those modes of decision if they think proper.—Nor is it very likely that the Courts, already overburthened with business, should endeavour to prevent the people deciding their own differences."

20. We shall only cite, in this place, one further Extract from the Reports which have been received by us, on the subject under consideration; but this is necessarily of some length.—It is from the letter of Mr. W. Bird, Judge and Magistrate of the City of Benares, dated 21st October 1816, (Paragraph 22 to 26.) "The employment of the Natives in the capacity of Sudder Aumeens and Moonsiffs, is not only the best mode of making use of them in the administration of Civil

vil justice, but the only one in the present state of the country that can be accommodated to the habits, the feelings, and the understandings of the people. It has too one incomparable advantage over every other, namely, that of making no alteration in the existing system; for nothing is so much calculated to shake the confidence of the Natives in our institutions as a disposition to supersede one arrangement by another. In this country, no general arrangement should be introduced, unless it is certain to be permanent; the rescinding of measures imprudently or improperly adopted, and the re-adoption of measures improperly or imprudently rescinded, have already perhaps, in some degree, diminished the reliance of the Natives on the stability of our system of internal administration: and this circumstance, regarded in a political point of view, gives to any arrangement, the operation of which they have been for a considerable time habituated to, an incalculable advantage over every other. On this ground alone I should oppose committing to Punchayets, the adjustment of Civil disputes, except such as may be voluntarily brought before them by the disputants. It would involve a radical change in the system of the administration of Civil Justice at present in force, and to which the people have been accustomed since the establishment of the British Government. In questions of caste, and of religious and moral discipline, the Punchayet has always exercised, and should no doubt continue to be allowed to exercise, exclusive jurisdiction as far as may be compatible with the preservation of the public peace: but I apprehend, that the community at large will not repose any confidence in the impartiality of Punchayets, in respect to Civil disputes; and if we examine the state of those countries where disputes of this nature are exclusively determined by Punchayets, it will be found that no such thing exists as Civil Justice. An instance of this has been lately brought to notice by the Judge and Magistrate of Allahabad, on the annexation of Purgunnah Handya to the British authority. "Civil justice," said that officer in his letter to Mr. Secretary Bayley, dated July 22d, 1816, "is not administered in this Pergunnah. The creditor confines his less powerful debtor, and takes possession of, or sells his property, without any reference to a superior authority. Landed disputes are determined by the greater force, or *referred to Punchayets*, or the canoongoes, whose decision the Aumil is unable to controul or revise. Disputes respecting caste are also settled by Punchayets; Ryots falling in balance are seized by their Zemindars, and confined until the arrear is paid up: and their property disposed of to liquidate the amount of it." Such is the state of things where the settlement of Civil disputes is left to the Punchayets. It is here stated that their decisions were not to be controuled by superior authority, and I beg to refer to a letter from me to the Provincial Court of this division, dated the 8th of April last, (a copy of which I shall subjoin,) expressing apprehensions that evils of this nature would result from the employment of Punchayets, as courts of law, for the decision of Civil disputes.—As Courts of arbitration, voluntarily had recourse

course to by the parties in preference to the established Courts, there can of course be no objection to them, provided the execution of their awards is always subsidiary to a regular suit; but provision for determining disputes respecting land, by arbitration, has been already made by Section III, Regulation VI, 1818, and although the awards in such cases are required to be enforced by the Civil Courts, this mode of adjustment has but in very few instances been resorted to. In short, it is obvious to all who have the opportunity of observing how much the Native institutions of the country have fallen into decay, that the mode of settling Civil disputes by Punchayet cannot be substituted for any part of the present system, or so employed as to diminish in any essential degree the labour of the regular Courts." "The arguments used by the Honorable Court in favor of these tribunals, are equally applicable to the Moonsiffs, under the new arrangement, contained in the first Clause of Section VIII, Regulation XXIII, 1814. By that arrangement the administration of justice is brought home to the very doors of the parties, who are thus relieved—and particularly the common Ryots—' from that expense and vexation, and sometimes ruinous loss of time to which they are subject, when they seek redress,' by summary suits in the Adawlut. As the Moonsiffs possess also the additional advantage above alluded to, of having been established for a long time, among a people whose peculiar characteristic is stated to be a rooted aversion to change, I see no advantage likely to be derived from the proposed diminution of the number of these functionaries—On the contrary, let as many be appointed, in each Zillah, as may be necessary to meet the wants and the necessities of the people; let also their powers be extended, so that they may be made useful in the determination of disputes respecting boundaries of land, crops, and water-courses, and whether in regard to such disputes, or to disputes respecting arrear and excessive demand of rent, the means of obtaining redress will be afforded, both to the Landholders and the Ryots, as effectually as is possible in the actual state of landed tenure in this country."

21. On a review of the objections above stated, against investing the Munduls and other heads of villages, with judicial authority, they may be recapitulated, in substance, as follows.

First. That it would be impossible to exercise a proper and necessary control over such a number of petty Courts.

Secondly. That the justice of their decisions could not be relied upon in any cases, wherein the principal Landholders, or farmers of land, and their Agents, may be parties, against the Ryots, and other inferior classes of the people.

Thirdly.

Thirdly. That except in matters of caste and religious discipline, recourse is seldom had at present to Punchayets, who are expected to aid the administration of Civil Justice in the Village Courts, and that the usual course of proceeding adopted by Native Juries, so denominated, is not such as to encourage any confidence in their impartiality.

Fourthly. That the established system of local Moonsiffs, or Native Commissioners with original jurisdiction, in suits for money and other personal property not exceeding Sixty-four Rupees, possesses all the essential advantages of the proposed village tribunals; is capable of being extended and improved, so as to meet every object of public utility; and having now become familiarized to the people, is preferable to a change of system, not called for by any necessity; the introduction of which would therefore be repugnant to the feelings and habits of our Native subjects; and at the same time weaken their general confidence in the stability of existing institutions.

22. Of these obstacles to the organization, or formal recognition, of Village Courts of Judicature, the first, or number of Courts that must be sanctioned, throughout every Zillah, under this Presidency, appears to be the most formidable.

23. In a Report from the late Senior Judge of the Moorshedabad Court of Circuit, (Mr. T. Brooke,) dated 6th May, 1816, and submitted to Government on the 29th August following, the jurisdiction of the Judge and Magistrate of the Zillah and City of Moorshedabad, is stated to contain about 2400 square miles; and to comprize 2432 Villages. It is further computed that each Village may contain on an average, 60 houses; and each house six inhabitants.*

24. Mr. H. Shakespear, late Judge and Magistrate of Zillah Rajshahye, in his report on the measures suggested by the Honorable Court of Directors, (dated 25th January, 1816, and submitted to Government on the 6th December following, paragraph 81,) remarks that "in the Reports furnished by 1771 Landholders of this District, under the provisions of Regulation XII. 1807, for the year 1221 B. S. 9852 Pykes and Chokeedars are stated to be employed by them in 10,571 Villages." In the next paragraph, he adds—"I ascertained last year, as well as I was able, without taking a regular census, that the population of this District amounted to upwards of two millions of adults."

25. In the appendix to a "Statistical View of the population of Burdwan," which was

* See Paragraphs 24 and 32, of Report cited on jail delivery of the city of Moorshedabad, to the end of March, 1816.

was prepared from materials collected by Mr. W. B. Bayley, when Judge and Magistrate of that District, (in 1813, 1814,) and has been published in the transactions of the Asiatick Society* a statement is given of the number of villages, houses, and inhabitants, in each Police Jurisdiction, a copy of which is annexed to this Report (Appendix A.) It appears from this Statement, that the 16 Thannahs, or Police Jurisdictions, of Zillah Burdwan, were found to contain 3496 Mouzas, or Villages; being on an average, 218 in each Thannah; that the average number of houses in each village was 75; and that allowing 5½ for a family, the total number of Inhabitants was computed to be 11,44,487. It is further stated, that the Jurisdiction of this Zillah includes an area of about 2100 square miles.

26. The late Superintendent of the Police for the lower Provinces (Mr. J. Shakespear) has annexed to his Report for 1815, a statement, exhibiting the estimated number of Villages in each of the Zillahs within the lower Provinces, except Ramghur, "as ascertained by the Darogahs of Police," which contains the following specification.

1. CALCUTTA DIVISION.

Burdwan,	3496
Hooghly,	4934
Jungle Mehals,	4241
Midnapore,	10,675
Cuttack,	10,293
Jessore,	4775
Nuddea,	4781
24 Pergunnahs,	2907
Suburbs of Calcutta,	703

2. DACCA DIVISION.

City of Dacca,	2594
Dacca Jelalpore,	2713
Mymensing,	8067
Sylhet,	9800
Tipperah,	6203
Chittagong,	1307
Backergunge,	2051

* Vol XII. Paper XIII.

3. MOORSHEDABAD DIVISION.

Moorshedabad Zillah and City,	2855
Bhaugulpore,	5567
Purnea,	4785
Dinagepore,	12,315
Rungpore,	5788
Rajshahye,	8710
Beerbhoom,	5129

4. PATNA DIVISION,

EXCLUSIVE of RAMGHUR.

Patna Zillah and City,	1069
Behar,	5541
Shahabad,	4507
Tirhoot,	7223
Sarun,	7051
Total of 28 Zillahs and Cities,	1,50,748
Average number of Villages in each,	5383

27. We shall only notice one more authority on this subject. The well known author of a work, entitled "Remarks on the husbandry and internal commerce of Bengal," after mentioning* that "an actual ascertainment found 80,914 husbandmen holding leases, and 22,324 artificers paying ground rent, in 2784 villages, upon 2531 square miles," adds the following note on the word, "*Mouzas*," which had been translated "*Villages*." "By this term is meant the land attached to a village, not merely the site of buildings. It answers to the word parish, more nearly than to any other English term; for several villages, or hamlets, may stand in the same Mouza; and, on the contrary, the same town will sometimes include several Mouzas. The common size of them may be judged from the ascertainment of 21,996 Mouzas on 18,028 square miles. Estimates have been attempted, from the number of inhabitants found in a few villages, deducing thence an argument applicable to the whole number of Mouzas,—such inquiries have been too limited to afford sufficient grounds for an accurate estimate: but the results, which have come to our knowledge, exhibit 197 inhabitants in each village; viz 92 males, and 87 females. The whole number of Mouzas in Bengal and Behar is not less than 1,80,000."

28. If the above calculation of the number of villages in Bengal and Behar be not over-rated, (and it falls short of the proportion to a square mile in Zillah Burdwan,)

* See Chap. II. on Population.

wan,) the entire number of villages in the whole of the Provinces, subject to this Presidency, might be assumed as exceeding 400,000; or on the lowest estimate, 3,60,000; being double the computation for Bengal and Behar only*

29. As however this calculation would give to the 43 Zillah and City Jurisdictions, an average of above 8,000 Villages each, and this computation, though less than the number stated to be included in some Zillahs, much exceeds the ascertained number in Zillah Burdwan, as well as the general average of the statement given for the lower Provinces by the Superintendent of Police, we shall, to prevent exaggeration, adopt the latter statement, as exhibiting the smallest number of Village Courts, which would be established in the several Zillah, and City Jurisdictions, if the plan under consideration were carried into effect.

30. But it is obvious that the efficient superintendance and control of so many thousand Village Moonsiffs, vested with judicial powers, in Civil cases of small amount, under rules and provisions similar to those enacted by the Government of Fort Saint George, in Regulation IV. of that Presidency,† could not be maintained by any Zillah Judge, without engrossing a large part, if not the whole, of his time, and without such control we should apprehend extreme abuse and perversion of the powers vested in Village Moonsiffs, by the Regulation adverted to; which authorizes them to hear, try, and determine, of their own authority, and without appeal, such suits as may be preferred to them for sums of money, or other personal property, the amount or value of which shall not exceed ten Arcot Rupees; or in cases voluntarily submitted to their arbitration, "to hear, try, and determine, as arbitrators, suits for sums of money, or other personal property, the amount or value of which shall not exceed one hundred Arcot Rupees;" to proceed *ex parte*, if the defendant, after being served with a summons, shall refuse or neglect to attend; to take the oral depositions of witnesses, without committing them to writing; to fine recusing witnesses, as well as parties, vakeels, or witnesses, guilty of disrespect to themselves, in a sum not exceeding one half of a Rupee, (commutable, if not paid, to confinement for twelve hours in the Village Chouky;) and finally, if not charged before the Zillah Judge with corruption or gross partiality, within 30 days, at the end of that period, to cause execution of their decrees by a sale of the Defendant's property, to be made by a peon whom the Moonsiff of the District is to depute for this purpose, on the application of the Village Moonsiff.

31.

* The land assessment of the Province of Benares, and of the Ceded and Conquered Provinces, which may be taken as a general comparative measure of the population, considerably exceeds three Crores of Rupees; whereas that of Bengal and Behar is not much above two crores and a half.

† This Regulation was passed on the 17th May, 1816; and is entitled "A Regulation for declaring the head inhabitants of villages to be Moonsiffs in their respective villages; to hear and decide Civil Suits for sums of money, or other personal property to a limited amount; and for defining their Jurisdictions."

31. It is true that by a provision in the Regulation above referred to, Village Moonsiffs are declared "liable to prosecution in the Zillah Court, for corruption in the discharge of their trust, by either party in the suit, and for any oppressive and unwarranted act of authority by the party injured." But unless a prompt investigation and decision of such charges can be expected, the rule will not be effectual; and if from the number of Village Courts in each Zillah, frequent complaints of this nature must be expected, it may be reasonably questioned, whether the Judge could find time for the due examination of them, without neglecting other duties.

32. It may further be observed, that the advantages of local information and influence, possessed by the Munduls and other heads of villages, which certainly, in many respects, point them out as the fittest persons to preside in a Village Court, are, in some degree, counterbalanced by the necessity of leaving them in the exercise of their judicial functions, even after an ascertained abuse of them, whilst they continue to hold the situation to which the office of Moonsiff is annexed. This objection applies to the leading principle of the Regulation enacted at Fort St. George, the second Section of which declares, that "Heads of villages shall, by virtue of their office, be Moonsiffs within their respective villages," and it would, we fear, be equally applicable to any similar arrangement that could be adopted at this Presidency, unless it were practicable to render corruption, or other gross abuse in performing the duties of Moonsiff, a disqualification for continuing to hold the situation of Mundul, or other head of a village.

33. In the report of the Commissioners appointed in 1776 to collect materials for the ensuing settlement (Messrs. Anderson, Crofts and Bogle) "the Mundul or *Mocuddum*," is described as "the chief Ryot of a *Gong*, or village, who may be said to hold his office by the good will of the inhabitants.—His duty and situation lead him to act as a mediator between the Ryots and the petty Collectors of the Revenue; to assist them in selling their crops, and in raising money to pay their rents; and to settle and accommodate the little disputes which arise in the neighbourhood. He is therefore chosen from amongst the oldest, or most intelligent inhabitants; and his influence and services depending solely on the good opinion of the Ryots, it is not the interest of the Zemindar to change him, so long as he preserves their confidence."*

34. We are decidedly of opinion that every encouragement should be given to the Munduls, Mocuddums, and other heads of villages, to arbitrate and settle, as heretofore, any trivial disputes between the inhabitants of their respective villages, which may be voluntarily submitted to their adjustment and award. But on a general consideration of the objections which have been stated, we must deliberately repeat the

* See a fuller extract from the report cited in the second volume of Mr. Harington's Analysis, page 67.

the doubt already expressed by us, on the expediency of vesting them with regular judicial authority, and a defined Civil jurisdiction, in the numerous villages which subsist in every Zillah under this Presidency.

35. The utmost, we can, at present, suggest, is, that information be obtained from Fort St. George, of the practical effects experienced at that Presidency from the institution of village Moonsiffs, and the recognition of village Punchayets, under the provisions of Regulations IV. and V. 1816;* and that if the result appear to encourage the introduction of a similar arrangement, for the more effectual administration of Civil Justice, in these Provinces, an experiment be made in such part of the country as may be deemed the fittest for a fair trial, under the discretion given by the Honorable Court of Directors, in the 163d paragraph of their general letter to this Government, dated the 9th November 1814.

36. In extending the above suggestion to the Village Punchayets, recognized by the Government of Fort St. George, we have, in some degree, anticipated the consideration of the second measure noticed in the fifth Paragraph of this Report, viz. the assemblage of Punchayets by the heads of villages, on the application of parties, to settle by arbitration claims of a Civil nature, exceeding the amount cognizable by the Village Courts; but the judicial authority of the Village Mundul, and the arbitration of a Village Punchayet, are intimately connected with each other, in the letters from the Honorable Court of Directors, who appear to have intended that in all cases coming before the head of a village, "either party should have the power of requiring the assembly of a Punchayet,"† although the Government of Fort St. George have judged it more expedient to provide distinctly (by Regulation IV. 1816,) for the judicial cognizance of claims not exceeding ten Rupees, by the Village Moonsiffs; (or a hundred Rupees if submitted by both parties to his arbitration,) and to make a separate provision (by Regulation V.) for authorizing Village Moonsiffs to assemble Village Punchayets, for the adjudication of Civil suits, for sums of money, or other personal property, without limitation as to amount or value.

37. The rules contained in this Regulation being restricted to cases in which "both plaintiff and defendant may jointly agree, that the matter at issue shall be determined by a Village Punchayet, without appeal, and may prefer a request in writing to the Village Moonsiff to summon a Punchayet," or in which "one party having

* Regulation V, 1816, was likewise passed on the 17th May 1816, and is entitled "a Regulation for authorizing Village Moonsiffs to assemble Village Punchayets, for the adjudication of Civil suits, for sums of money, or other personal property, without limitation as to amount or value, within their respective jurisdictions, and for defining the powers and authority to be vested in such Village Punchayets."

† Paragraph 61, of letter to Fort St. George, dated 29th April, 1814.

ing preferred a request in writing to the Village Moonsiff, to summon a Punchayet, the other party being an inhabitant of the same village, on being summoned by the Village Moonsiff, shall attend, and voluntarily give his assent in writing;" the principle, on which the Regulation is founded, appears to be free of objection, and the provisions of it appear to be, in general, well calculated for promoting the object intended by them, except that, we should fear, some dissatisfaction, and consequent discouragement to Punchayets, might arise from the compulsory rule in the second clause of Section III, viz. "that any inhabitant of the village refusing to serve on a Village Punchayet, shall be liable to be fined at the discretion of the Village Moonsiff, in a sum not exceeding five Arcot Rupees." We should also apprehend too much occupation of the Zillah and Provincial Courts, by the Section which allows parties satisfied with the award of the Punchayet, on the plea of "gross partiality," to stay execution by a petition on stampt paper to the Zillah Court, if presented within thirty days, and adds—"If the partiality charged against the Punchayet, shall be established to the satisfaction of the Judge, by the oaths of two credible Witnesses at the least, he shall in every case, whatever the amount or value of the suit may be, submit his proceedings with his opinion on the case, to the Provincial Court of Appeal; who, provided the charge be proved by such proceedings to their satisfaction, shall annul the decision, and the parties shall be at liberty to have recourse to another Punchayet, or to any other competent jurisdiction."

38. It is further a question for consideration, whether any attempt to alter the usual mode of convening Punchayets, to regulate their proceedings, and to bring their awards, or the personal conduct of the arbitrators, under the control of the regular Courts of Judicature, may not tend to defeat the object intended, by discouraging, rather than promoting, the extension of this mode of arbitration to Civil disputes of a general nature, distinct from those of caste and discipline.

39. It would render this Report too voluminous to quote in it all that has been written on the subject of Punchayets, in the accompanying letters, and those submitted to Government on the 6th December, 1816; but we beg leave to insert the following Extract from the letter of Mr. H. Shakespear, late Judge and Magistrate of Zillah Rajshahye, dated the 25th January, 1816.

"It is much to be lamented that the Punchayet, an institution so admirably adapted to the feelings and prejudices of the Natives, should have been omitted in the formation of our Judicial Code. It is unnecessary for me to enter into particulars of this institution; simplicity of proceeding, and facility of access, were its most prominent features, whilst the local knowledge of the moderators (if I may be allowed the expression) and their intimate acquaintance with every point and prejudice which was

to

to determine the matter in dispute, enabled them to give their award with the greatest chance of satisfaction to all parties concerned. The difficulty of grafting rules so simple on our complicated system of jurisprudence, with all its forms and checks, must, I conceive, have occasioned its entire omission at the revision of the Code in 1793; as well as in the rules for the administration of Justice previous to that period; and highly desirable as it would be to furnish the lower classes with the means of ready and efficacious redress of petty grievances, I confess there appear to me considerable difficulties in recognizing the authority of the Punchayet, in such a manner as to derive any extensive benefit from its operation in the reduction of our judicial business.—Ignorant as I am of the mode pursued under the Madras Government, in regulating the establishment of the Punchayet, it must appear presumptuous in me to give any decided opinion on the subject; but all that I have seen and known, of the Natives of this Province, leads me to think, that any permission of a regular appeal from the award of the Punchayet would virtually annul the object of its institution altogether, and that we should lose, instead of gaining ground, by the infinity of appeals from its decisions. The Punchayet, as established in former times, was not subject to any formal rules of conduct: nor were its decisions usually committed to paper. It was assembled at the requisition of disputants; and consisted of the respectable inhabitants of the villages; who must have felt their character at stake in the award they were called on to give; or it was an assembly of self constituted umpires to preserve the peace and good conduct of the village; or in other cases, they were directed by the proprietor of the soil, or his agent, to assemble and take the matter in dispute under their consideration; at no time were they tied down by rules, so necessary to bring the matter at issue in appeal before a superior tribunal.—If the final judgment in appeal is to be passed by a Native, there is reason to conclude that the award of five persons, chosen voluntarily by the parties, will approach nearer to justice, and impartiality, than the decisions of the Native Commissioners, as recommended in the 58th Paragraph of the Honorable Court's letter; and if, on the other hand, a second appeal, special or summary, is to be carried to the Judge's Court, the far greater part of the advantages of the Punchayet, resulting from facility and promptitude of redress, and on adherence to ancient customs, will be rendered of no effect; whilst our Courts will be as much as ever over-whelmed with business.—It appears to me that any attempt to assimilate the proceedings of the Punchayet to those of our inferior Courts, would destroy that simplicity and locality of action, which is its best recommendation, and the main spring of its formation.—As an established Court (in which form only I have hitherto considered it) numerous obstacles would occur in the nomination of its members; in the enactment of rules for the guidance of so many thousand Courts, and in the enforcement of their decisions. That the satisfactory adjustment of

disputes;

disputes, without the vexation and uncertainty of a law suit, is highly expedient, every one must allow; but all kinds of adjustments, short of going to law, must be made with the free consent of the parties concerned, and by persons appointed by them. Ryots refer their disputes to other ryots; merchants to an assembly of merchants; Hindoos to persons of their own caste, and so on; and the Punchayet, as a Court of Arbitration, will entirely change its character and constitution, if the members of it are nominated by the Officers of Government, and regular appeals left open from its awards. As observed in the 52nd Paragraph of the Honorable Court's letter, it is, with the mutual consent of the parties, a species of trial well known and understood amongst the people of this country; and from all that I have been able to learn on the subject, it is still commonly resorted to on all petty occasions,—more particularly in points touching their religious prejudices, which they are naturally jealous of submitting to the scrutiny of our Courts. In the latter cases, the award is given by imposing a penalty on the person cast; who is expelled from the society of his former associates, until he conforms to the decision; and a similar mode is probably observed in enforcing the decisions of all other trials by the Punchayet. For the foregoing reasons, which I offer with a conviction of my own imperfect knowledge of the subject, I am of opinion that the Punchayet can never be established so as to form an integral part of our judicial system; which appears to be in the contemplation of the Honorable Court, although I am at the same time decidedly in favor of every encouragement being held out to the Natives to submit their disputes to its investigation and adjustment. With a view to this object I would suggest that it should be promulgated, in the most public manner; that in future the award of the Punchayet would be considered in the most favorable light in the established Courts of Judicature: that in cases of disputes respecting boundaries, alluvian lands, rights to irrigation, and generally in all cases likely to become at a future period the subject of judicial investigation, the people should be recommended to give and receive bonds of arbitration duly attested, and copies of the final award of the Punchayet; that the Stamp Regulations should not refer to its proceedings, and that members of the Punchayet should not be liable to be summoned to the established Courts, merely on account of their having investigated the matter in dispute, unless their evidence should be indispensably material to the case, and that the rules provided by Clauses I, II, III, Section III, Regulation VI, 1813, allowing persons to refer disputes regarding lands to arbitration without application to the Civil Courts, should be made equally applicable to all Civil disputes of any description whatsoever."

40. We shall again have occasion to notice Punchayets, in considering those proposed to be convened by the Native Commissioners of a higher order than the heads

heads of Villages; and will only add in this place that we wish to defer giving a final opinion upon the expediency of enacting at this presidency, rules for assembling Village Punchayets, corresponding in substance with those now in force at Fort Saint George, until the result of their operation at that Presidency shall have been ascertained, as suggested in the 35th paragraph of this address; if that suggestion should be approved by Government.

41. Our present idea is, that every possible encouragement should be given to the Munduls and other heads of Villages, with the assistance of Punchayets when desired by parties, to act as arbitrators, (but without any formal rules of procedure,) for the adjustment of disputes of a Civil nature and small amount, between the inhabitants of their respective villages; under provisions for enforcing their awards, when not performed by the persons against whom they are passed, similar to those already established in Section III, Regulation VI, 1813; with such modifications as may be requisite, for the speedy execution of the award, when not impeachable, by order of the most convenient Court, to which the enforcement of such awards can be safely entrusted.

42. The next proposition to be considered, is in substance,* that instead of the present establishment of Sudder Aumeens and Thanah Moonsiffs, about four Native Commissioners be employed, in each Zillah; one of whom to be stationed where the Zillah Court is held, the others in different parts of the District; and that they have cognizance of suits to an amount, or value, not above two hundred Rupees; with an appeal from their decisions to the Zillah Court, in cases exceeding twenty Rupees.

43. The sentiments of this Court upon the utility and necessity of an establishment of Native Commissioners, for the convenience of the people, and aid of the European Courts, in the general administration of Civil Justice, have been frequently submitted to Government; and were particularly stated in a report from the Chief and Second Judges, dated 30th June, 1814, (Paragraph 66 to 100.)

44. In a previous Report, dated the 17th October 1809 (paragraph 25,) it had been observed, "a difference of opinion exists upon the utility of the present establishment of Native Commissioners.—But considering the limited number of European Officers that are, or can be, employed in the Judicial Department, it is evident that without the aid of inferior Judicatures under Native Superintendance, it must be utterly impossible to provide for the complete administration of Civil Justice, in the extensive and populous Provinces subject to the British Government under this Presidency.—The abuses which have been ascertained to prevail

* Vide second head in Par. 5.

prevail under the present establishment of Native Commissioners, appear to us to call for a reformation; but not for an abolition of the establishment, without providing another to supply its place.—And a radical defect in the existing system would be remedied, by allowing the Commissioners a sufficient fixed salary, instead of the inadequate and precarious compensation now received by them from the Institution fee, which is supposed to occasion the instigation of numerous suits, that would not be brought forward, if the Commissioners had not an interest in promoting them."

45. In their Report of the 30th June, 1814 (paragraph 82) the Court adverted to their former letter, from which the above is an Extract, and added, " we still entertain the sentiments expressed in the above cited paragraph, and apprehend that no reformation of the present system will be effectual, without providing a remedy for the radical defect referred to; either by allowing the Native Commissioners an adequate salary, instead of the small fee now received by them, or if this cannot be done, by employing them (as we understand to be in the contemplation of Government,) on other duties besides the trial of Civil suits, and allowing them to receive a compensation for the performance of these duties, such as may render their situations, on the whole, advantageous and valuable to them, without having recourse to dishonest practices. The first mode of payment, if practicable, would evidently be the best. As the Moonsiffs and other Native Commissioners are now paid by the Institution fee (or stamp duty established in lieu of it by Section XIII. Regulation I. 1814,) on suits tried and decided by them, with provisions that this fee shall be paid to the Commissioner on his determination of the suit, and shall not be received by him, on suits adjusted by razeenamah; when the parties may be entitled to a return of the fee under Section XI. Regulation XIII. 1810, it is manifestly the interest of the Commissioners to promote the institution of suits cognizable by them; to discourage their adjustment when instituted, and to hasten the determination of them, with a view to receive the fees. When these circumstances are considered, with the small amount after all, of the fees receivable by the Moonsiffs, (for the expense of their establishments, as well as their own maintenance,) it cannot be matter of surprize, that occasional or frequent instances of corruption should occur, in a numerous body of Native Officers, so situated. We need not observe to your Excellency in Council, that the European Courts of Judicature now established in these Provinces, were deliberately constituted upon different principles of experience, policy, and equity; but we must remark, that the force and wisdom of these principles are, at least, equally applicable to the Native Courts, the Judges and Officers of which, from their education and habits, cannot be generally expected to possess the same degree of moral rectitude, or the same regard to honor and character, as the European servants of the

the Company, employed in the same capacity."

46. In the sequel of the same Report (paragraph 91,) the Court referred to a Minute from their Chief Judge, which was submitted to Government on the 17th October, 1809, suggesting " that a fund to provide a fixed monthly allowance of fifty Rupees for a sufficient number of Mofussil Commissioners (calculated on an average, at ten for each Zillah,) and One hundred Rupees for each Sudder Commissioner, (not being a Law Officer) amounting, for the whole, to Rupees three hundred thousand per annum, might be raised by extending the rate of Institution fee, established by Regulation VI. 1797, for suits not exceeding two hundred Rupees, viz. one Anna in the Rupee, or Six and a quarter per cent, for all suits, tried and determined in the Civil Courts, of whatever amount." This suggestion was accompanied with another, which has been since adopted in Section XXV. Regulation XXVII. 1814; viz. that with a view to prevent such increase in the Institution fee, from falling too heavily upon parties in causes of large amount, the fees of pleaders should be modified, so as to prevent their exceeding, in any case, the sum of one thousand Rupees.

47. The Court (in paragraph 93 of their Report, dated 30th June, 1814) exhibited a statement of the proposed rate of Institution fee, compared with the stamp duty established by Section XIII. Regulation I. 1814; and added the following remarks.—"The only objection which occurs to us against raising a fund to defray the charge of an establishment of Native Commissioners on fixed salaries, as proposed by our Chief Judge, is, that it would add to the expence of parties in suits not cognizable by the Commissioners. As such parties however, in common with others, will receive the benefit of an amended constitution of the Courts of the Native Commissioners, in all cases wherein they may have occasion to sue or defend an action in those Courts, and as an uniform rate of charge upon the amount or value sued for in the Civil Courts, for the purpose of providing more effectually for the general administration of Civil Justice, does not appear exceptionable in principle, we submit to the consideration of your Lordship in Council, whether it may not be expedient to adopt the plan suggested by our Chief Judge, if no other practicable means of providing for a faithful discharge of duty in the Courts of the Native Commissioners should appear more advisable. We shall add only, upon this point, that in like manner, as a limit is fixed to the stamp duty payable under Section XIII. Regulation I. 1814, so as not to levy, in any case, more than two thousand Rupees, some limit, proportionate to the higher rate proposed to be established, might also be fixed in the rule which it would be necessary to enact for the new rate of Institution fee suggested."

48. The Court concluded that part of their Report, dated 30th June, 1814, which related

related to the Native Commissioners, in the following terms.

"In the event of the measure suggested, or any other which may appear more advisable, being adopted by your Excellency in Council, to provide for the support of a limited number of Native Commissioners, Sudder and Mofussil, at fixed salaries, we should recommend, that the Moonsiffs be stationed in the principal towns, or large villages, within each Zillah, and that a new arrangement of their jurisdictions should take place, according to the reduced number, which on inquiry it might appear proper to allot to the several Districts respectively. But should it not be found practicable, by any means which your Excellency in Council may deem proper, to provide for an establishment of Moonsiffs, on the plan suggested, we can only express our full concurrence in the expediency of their being employed, on other duties, besides those properly appertaining to them in their judicial capacity, with a view to their obtaining a suitable means of support from the compensation attached to the performance of such duties."

49. In answer to the Report above cited, the Court were informed by the Chief Secretary to Government, on the 19th July, 1814, that in the judgment of His Excellency the Vice-President in Council, an indispensable necessity appeared to exist for continuing the office of Native Commissioner, until some better means should be devised for the trial and decision of causes of inconsiderable amount, and that the improvement of which the office might be susceptible, would be duly considered, in forming the general new arrangements and Regulations, for the administration of Civil Justice, which were then in course of preparation.

50. Regulation XXIII. 1814, was accordingly enacted, on the 29th November, 1814, (to be in force from the 1st February 1815,) "for reducing into one Regulation, with amendments and modifications, the several rules which have been passed regarding the office of Moonsiffs, or Native Commissioners, and of Sudder Aumeens or head Commissioners; for modifying, and extending their respective powers in the trial and decision of Civil suits; and for authorizing them to discharge certain additional duties, under the direction of the Zillah and City Judges."

51. By this Regulation, the powers before granted to Native Commissioners, as referees and arbitrators, were discontinued; a new establishment of Moonsiffs was instituted, possessing original jurisdiction, corresponding with that of the Police Thannah; (with a discretion to the Provincial Courts to include two or more Police jurisdictions within that of a Moonsiff;) the Zillah and City Judges, in their nomination

nomination of Moonsiffs for the confirmation of the Provincial Courts, were directed to give a preference to such of the Pergunnah and City Cawzies as might appear to be duly qualified for the trust; the amount of suits for money or other personal property made cognizable by Moonsiffs, was raised from fifty to sixty-four rupees; with a provision that the cause of action should have arisen, within one year, previously to the institution of the suit; and with further restrictions to exclude the cognizance of suits, in which the Moonsiffs themselves or their relatives or dependants, or the vakeels or other persons employed in their Cutcherries, or a British subject, European foreigner, or an American, might be parties, as well as suits preferred by any persons *in formâ pauperis*. New rules or modifications of those before in force, were, at the same time, enacted, for regulating the pleadings, proceedings, and process of the Courts of the Moonsiffs and Sudder Aumeens; and the jurisdiction of the latter, besides the cognizance of appeals from decisions of the Moonsiffs, which were previously referrible to them under Section IX, Regulation XIII, 1810, was extended, under restrictions similar to those above stated respecting the Moonsiffs, to the trial and decision of original suits for money or other personal property, or for the proprietary right or possession of land or other real property, which might be referred to them by the Judges of the Zillah and City Courts, not exceeding in amount or value, the sum of one hundred and fifty Sicca Rupees.

52. By Section L. to LV. Regulation XXIII. 1814, the Zillah and City Judges were further authorized (as generally suggested in the report of the 1st and 2d Judges of this Court, under date the 30th June, 1814, paragraph 100;) "to empower any Moonsiff, within their respective jurisdictions, to make a local investigation in suits, depending before them, relating to the adjustment of accounts in revenue or mercantile transactions, or regarding the boundaries of lands or houses, or regarding the right of way in roads or pathways, or regarding any rights in forests, commons, rivers, lakes, ponds, wells, reservoirs, or watercourses; or regarding the quantity and description of land, and the rent to which it is liable, and generally in all questions of local rights and usages which cannot be conveniently decided, without an inquiry on the spot." The Judges were likewise authorized to employ the Moonsiffs, "in delivering over formal possession of lands, houses, or other real property, in conformity with decrees, regular or summary," as well as "in the attachment and sale of personal property, for the purpose of realizing the amount of fines, or of decrees," and "in ascertaining and reporting upon the sufficiency of securities; and the indigence of persons suing *in formâ pauperis*." It was further provided that the Moonsiffs should continue to discharge the same functions as heretofore, "regarding distress and sale, for the recovery of arrears of rent," but that the Zillah and City Judges should be careful the time of the Moonsiffs be not so much occupied in the miscellaneous duties above described, as to interfere materially with the

the early trial, and decision of the regular suits depending before them.

53. By Section LXXVI. of the same Regulation it was provided, that "in the trial of regular suits by the Zillah or City Judges, or in miscellaneous cases, whenever the adjustment of accounts regarding the execution of decrees, and mercantile or revenue transactions, or the investigation of disputes between landlord and tenant, or of other special matters of account, fact or usage, may be requisite; and such adjustment, or investigation, if conducted by the Judge himself, would occupy a larger portion of his time than could be conveniently devoted to it; the Judge is authorized to direct any of the Sudder Aumeens under his jurisdiction, to make such adjustment or investigation;" And by Section LXXVII. this authority to employ the Sudder Aumeens, as well as that above stated, of employing the Moonsiffs, in suits depending before the Judges, is extended to similar cases before the Registers of the Zillah and City Courts.

54. For the performance of the miscellaneous duties above described, whether by Moonsiffs, or Sudder Aumeens, the Judges are empowered to direct an adequate remuneration, payable by the parties interested, under certain restrictions. But it has not been deemed expedient, or found practicable, to provide for the more impartial and upright discharge of the judicial functions of Moonsiffs, by granting them a fixed salary, in addition to, or instead of the institution fee, or stamp duty substituted for that fee, by Section XIII, Regulation I, 1814, which varies from one Rupee to four Rupees, but can in no instance exceed the latter sum, in suits for the highest amount cognizable by them.—They are indeed now entitled to this fee, or duty, in suits adjusted before them by razeenamahs of the parties, as well as in those investigated and decided by them, under the amended rule contained in Section XLIX. Regulation XXIII. 1814; (explained by Section IV. Regulation III. 1817,) but from the communications made by some of the Zillah Judges, there is reason to believe that the authorized allowances to Moonsiffs are still very inadequate to their personal support, and to the payment of a small establishment of subordinate officers, who must necessarily be employed by them.

55. The Judge of Zillah Bundlecund, in his letter dated 9th November, 1816, (paragraph 12,) has exhibited a statement of the number of causes decided, and amount of fee received, by the Moonsiffs in that District, from August, 1815, to August, 1816. It appears from this Statement, that fourteen Moonsiffs, who decided 550 causes in a twelve month, received one thousand and ninety-nine Rupees, being, as Mr. Wauchope remarks, an average of 6½ per Mensem, to subsist the Moonsiff, and pay his establishment. In this instance however, the Moonsiffs had been recently established, and the average number of suits decided by them, during the year referred to, was rather

ther less than 40 each.

56. The late Judge of Zillah Rajshahye (Mr. H. Shakespear) in his letter, dated the 25th January 1816, (paragraph 20,) states: "In the past year, the fees paid to 28 Moonsiffs in this District, amounted to four thousand nine hundred and fifty-three Rupees, giving an average of fifteen Rupees per Mensem to each Moonsiff, out of which they maintain a Shiristadar, a Mohurrir, and two persons to administer the oaths to Hindoo and Mussulman witnesses, who give evidence in their Courts. A few of them get fifty or sixty Rupees, but many not even fifteen Rupees a Month, and that they must, in such circumstances, resort to corrupt and improper practices, in order to support themselves, is sufficiently obvious."

57. In the same letter (paragraphs 18 and 19,) Mr. Shakespear observes, "should the revival of the Punchayet lessen the number of suits at present filed in the Moonsiffs' Courts (and there is reason to suppose it would have that effect,) it will be absolutely necessary to reduce the number of those officers, who at present barely gain a subsistence by the emoluments of their office, which would be then still further reduced. One Moonsiff holding his Court in the centre of four Thannah divisions, would probably be found sufficient to decide the number of suits brought before him; but as this Court would require a larger establishment, and to be put upon a more respectable footing than the Moonsiffs' Courts now are, a salary of fifty Rupees a month should be attached to the office, not only to enable them to keep up a proper establishment, but to support, in some degree, a creditable appearance amongst those who are to look up to their authority."

58. If it be found practicable to establish Village Courts and Punchayets, for the adjustment of part of the suits now cognizable by Moonsiffs, the number of the latter may certainly be reduced, though if it were possible to provide for their receiving a more adequate compensation, we should rather suggest a continuance of the present convenient rule for their local jurisdiction, with an extension of their powers, as well as those of the Sudder Aumeens, to take cognizance of causes to a higher amount.

59. The remarks of the Judge of the City of Benares, in his letter of the 21st October 1816, from which the following is an extract, appear to merit particular attention.

"Of the native Judicial Officers I have already expressed my opinion; an opinion founded on long experience of their utility.—In those districts where the inhabitants enjoy the benefit, comparatively speaking, of a regular and efficient administration

administration of Civil Justice, it will be always found attributable in a very extensive degree, to the aid, derived from the instrumentality of these officers.—It is to be lamented that their powers are too contracted.—The first class of these officers are equal to the discharge of duties much higher than those to which they are at present confined.—The Sudder Aumeens, (as was stated by me in a letter to the Sudder Dewanny Adawlut, dated the 9th of May last,) are men of mature age and experience; in many instances of considerable learning, and are familiarly acquainted with the religion, laws, manners, habits, and customs of the people.—Yet the judicial powers of officers so qualified, are restricted to the investigation and decision of original suits not exceeding one hundred and fifty Rupees; and to hearing appeals from the decrees of the Moonsiffs.—Not only does the Government, by this restriction, neglect to avail itself of the instrumentality of the Sudder Aumeens in disposing of a mass of business which is now imposed upon the European Officers, but it is actually obliged to burthen itself with their support.—The Sudder Aumeens, in consequence of being unable to subsist upon the profits of their own labours, receive monthly a compensation from Government.—Why should not such of the Sudder Aumeens, as are qualified by their experience, industry, and abilities, be specially empowered to try and determine any suits originally instituted in the Zillah or City Courts not exceeding three hundred Rupees in value or amount.—Why should they not also be empowered to execute their own decrees, and the decrees of the Moonsiffs? This addition to their powers would relieve the Judge of a great deal of troublesome miscellaneous business, and by enabling the Sudder Aumeens to maintain themselves, would relieve Government from the expense of paying them a monthly salary.—The second class of Native Judicial Officers are also unable to maintain themselves; and as Government makes them no allowance, they are actually, in some Pergunnahs, in a state of starvation.—The rule contained in Clause first, Section XIII, Regulation XXIII, 1814, which precludes them from taking cognizance of any action, the cause of which shall not have arisen within the period of one year previously to the institution of the suit, has imposed all suits, in which the cause of action has not so arisen, upon the Superior Courts; and has left the Moonsiffs little or nothing to do; and in this district at least, if Section XXI, Regulation V, 1812, had not, by requiring all summary suits for excessive demand of revenue, to be referred in the first instance to the Collector, for his report, actually put a stop to the decision of such suits altogether, and by so doing, cast them in the shape of regular actions upon the Moonsiffs, these Officers would have been compelled, from want of employment, and the means of subsistence, to abandon their situations.—The convenience derived by the public from the Moonsiffs, since the promulgation of that Section, in the disposal of suits of this description, proves that all suits, not exceeding in amount the sum of sixty-four Rupees, whether for excessive demand, or arrear of revenue, might be disposed of by those officers, in

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a mode, much more satisfactory to the public, than by imposing them either upon the Collector or the Judge."

60. Since the date of Mr. Bird's letter, the Moonsiffs have been empowered (by Section XII. Regulation XIX. 1817) to take cognizance of suits, within the prescribed limitation of sixty-four Rupees, the cause of action in which may have arisen within three years before the institution of the suit, and it is possible that this extension of the powers vested in them by Section XIII. Regulation XXIII. 1814, may furnish the number of Moonsiffs whom it may be thought proper to continue in future, with sufficient occupation. If not, however, we are not aware of any sufficient objection against a further enlargement of their authority, to try and determine, in the first instance, suits for money, or other personal property, not exceeding one hundred or one hundred and fifty Rupees. The former sum would perhaps be sufficient, but the latter is suggested by the gradation of stamp duties, payable on the institution of suits under Section XIII. Regulation I. 1814. We are also of opinion that the cognizance of the Sudder Aumeens might be safely and beneficially extended to suits for an amount or value, not exceeding three hundred Rupees, as proposed by the Judge of the City of Benares, or even to five hundred Rupees, the present limitation of suits ordinarily cognizable by the Registers.

61. One advantage attending such augmentation of powers, both to the Moonsiffs and Sudder Aumeens, would be an increase of their allowances, from the higher rate of stamp duty receivable on part of the suits that would become cognizable by them, viz. eight Rupees on suits for an amount exceeding sixty-four Rupees, instituted before the Moonsiffs, and sixteen Rupees on suits referred to the Sudder Aumeens, for an amount or value, above one hundred and fifty, and not more than three hundred Rupees'* But important as this consideration is, under the difficulty of providing an adequate compensation to the Native Commissioners, by a direct salary from Government, it is, by no means, the principal object of our suggestion for extending their judicial functions; the chief benefit to be expected from this measure is the relief it is calculated to afford to the European Civil Courts, whilst at the same time, it combines greater convenience to the Native inhabitants, who reside at a distance from the station of the Zillah and City Courts, in having a local tribunal for trying, in the first instance, claims to an amount exceeding sixty four, and not above one hundred and fifty Rupees, subject to an appeal to the Zillah or City Court, which may be there investigated, accecording to the nature of the case, and the state of depending business, by the Judge himself, or at his discretion, by the Register, or a Sudder Aumeen.

62.

* In suits above three hundred Rupees, the stamp duty is thirty-two Rupees. But if this be considered too large a compensation for a Sudder Aumeen, it may be restricted to sixteen Rupees, by a provision, similar to that prescribed for the Registers in the Seventh Clause of Section IX, Regulation XXIV, 1814.

62. The Hon'ble Court of Directors have proposed that about four Native Commissioners, with a salary in addition to the Institution fee, be employed in each Zillah, one of whom only to be fixed at the station of the Zillah Court, that they be invested with original jurisdiction to an amount or value not exceeding two hundred Rupees, subject to an appeal to the Zillah Court, in cases above twenty Rupees, and that they be also empowered to receive appeals from the decisions of the Village Courts, with authority to pass a final judgment thereupon, unless there appears to be ground for a special appeal. The former part of this arrangement appears to have been adopted by the Government of Fort St. George,* but not the latter, as already noticed in what has been said respecting the Village Courts established at that Presidency, whose judgments are impeachable only by proof of corruption, or gross partiality.

63. It is unnecessary to repeat our sentiments in favor of a just and liberal compensation to the principal Native Commissioners. The resolutions of Government, passed on the 28th February 1817, will, we trust, prove sufficient to secure this object with respect to the Sudder Aumeens; being intended to give as many of them as may be requisite, in addition to the Law Officers and Cauzies of Cities, who receive a salary from Government, and who may appear from the reports of the Zillah and City Judges, to have manifested proper diligence in the discharge of their respective duties, "an average monthly income of one hundred Rupees:" which, we understand, to be exclusive of any actual and necessary expense incurred for an establishment of subordinate officers.

64. We entertain great doubt of the expediency of vesting any description of Native Commissioners with final powers of adjudication, especially on original trials; and when the tribunal is situate at a distance from the station of the Zillah or City Court. The following observations of the Judge of Zillah Bundlecund (in paragraph 18, of his letter dated 9th November, 1816,) though immediately applied by him to the former system of Punchayets, appear to be equally applicable to that of Native Commissioners, invested with judicial powers. "Numerous as are the evils and inconveniences incidental to our present Judicial administration, it is quite fallacious to suppose, that the body of the people were happier under their own system of settling their disputes, or that their interests will ever be promoted by any system which tends to augment the responsibility of Native agents, or to separate that responsibility from European superintendance. Until a principle of public virtue,

* In Regulation VI. 1816, of that Presidency, entitled "A Regulation for reducing into one Regulation the rules which have been passed regarding the office of Native Commissioners, for modifying and extending their powers for the trial and decision of Civil suits, and for authorizing them under the designation of District Moonsiffs, to discharge certain additional duties."

virtue, regard to truth, and liberal and enlarged notions, take the place of the opposite vices, which now characterize the generality of all Natives, we must in vain look for the correct discharge of any trust by Native agency, not under the immediate and active superintendance of European authority."

65. On the same principle, and from experience of the actual success which has attended the establishment of Sudder Aumeens at the station, and under the immediate inspection of the Zillah or City Judge, we are further doubtful, whether it would be expedient to station any of the Commissioners of this description in the interior of the District, with powers to try appeals from the decisions of contiguous Moonsiffs; though it is proper to state, that the late Judge of Zillah Rajshahye (Mr. H. Shakespear) has recommended this measure in the following extract from his letter of the 25th January, 1816, (paragraph 24 to 26.)

"The officers of this description (Sudder Aumeens) may be increased to any number at a little expence to Government, and with the greatest benefit and convenience to the people. Courts of this nature might be established, with the sanction of Government, on a recommendation from the Judge, to the Sudder Dewanny Adawlut, in the interior, and would constitute Courts of Appeal from the decisions of two or more of the Moonsiffs in that quarter of the district where the Court is held; such appeals to be lodged first in the Zillah Court, and referred to the Sudder Aumeen for trial. By fixing the amount of causes cognizable by them at above sixty-four Rupees, and as high as one hundred and fifty Rupees, they would not interfere with the Moonsiffs, and the constitution of their Courts need undergo no alteration, further than their being allowed to receive the petitions of complaint, and to issue process, without reference to the Zillah Court."

66. The establishment of Native Commissioners to be maintained in future, must depend partly on the determination of the previous question respecting the village Courts. If these should be continued, with judicial powers, it may be requisite to place a certain number of villages under a local Native Commissioner with appellate jurisdiction, and to allow a second appeal, in special cases only, to the Zillah or City Judge. But if the heads of villages be recognized as arbitrators only, and the original jurisdiction of Moonsiffs, in Thannahs, or other local Divisions, be continued, we are of opinion that all appeals from the decisions of the Moonsiffs should lie to the Zillah or City Court; and that the Sudder Aumeens, empowered to try such appeals, on reference from the Judges, should reside, as heretofore, at the station of the Zillah or City Court.

67. We shall only add, on this subject, at present, that with a view to enable the Governor General in Council to determine, at all times, what number of Sudder Aumeens and Moonsiffs, appears requisite for the speedy administration of justice in cases within their cognizance, it may be advisable so far to modify Sections VII. and LXI. of Regulation XXIII. 1814, as to require that all alterations in the actual establishment of Native Commissioners of whatever description, be submitted for the ultimate decision of Government. We observe that it is provided by the Regulation for District Moonsiffs at Fort Saint George,* that "the number of District Moonsiffs for each Zillah shall be fixed by Government;" and it appears proper that the number of subordinate Civil Courts, in common with the Police Thannahs, should be regulated on the reports of the local officers, by the supreme executive authority.

68. The half yearly statements of decided and depending causes, will afford the most satisfactory information of the sufficiency of the existing establishment of Native Commissioners, in the several Zillahs and Cities.—It is therefore unnecessary to enter upon any detailed consideration of this point in the present Report. But it may be observed, that on a general view of the half yearly Statements submitted to Government on the 4th June last, it does not appear that any material arrear of Civil Causes was depending before the Sudder Aumeens, or Moonsiffs, at the commencement of the year 1817.

69. The aggregate number of suits depending before the Sudder Aumeens and Moonsiffs, in the lower and upper Provinces, on the 1st January 1817, was as follows.

Sudder Aumeens.	
Lower Provinces, - - -	24,927
Upper Provinces, - - -	4,114
Moonsiffs.	
Lower Provinces, - - -	35,030
Upper Provinces, - - -	3,700

70. The following number of Causes was decided on trial, dismissed on default, or adjusted before those officers, during the preceding year 1816.

Sudder Aumeens.	
Lower Provinces, - - -	31,292
Upper Provinces, - - -	7,630
Moonsiffs.	
Lower Provinces, - - -	64,668
Upper Provinces, - - -	7,387

71.

* In Section V of Regulation VI. 1816, before noticed.

71. The half yearly Reports, made up to the end of June 1817, shew the number of causes depending before the Sudder Aumeens and Moonsiffs on that date, and the number decided, dismissed or adjusted before them, during the preceding six months, as follows.

I. Depending 1st July, 1817.

Sudder Aumeens.

Lower Provinces, - -	24,059
Upper Ditto, - - -	3,500

Moonsiffs.

Lower Provinces, - -	30,118
Upper Ditto, - -	10,695

II. Decided, dismissed, or adjusted, from 1st January to 30th June, 1817.

Sudder Aumeens.

Lower Provinces, - -	20,721
Upper Ditto, - - -	4,118

Moonsiffs.

Lower Provinces, - -	34,244
Upper Ditto, - -	4,888

72. It appears from the foregoing statements that the number of causes depending before the Sudder Aumeens and Moonsiffs on the 1st July last, was little more than what had been disposed of by them, or adjusted before them, in the preceding six months; which, considering the time that must necessarily elapse in the pleading and investigation of Civil Causes, can scarcely be deemed an actual arrear; or if any, cannot be regarded as of serious consequence.

73. Whether the Native Commissioners stationed in the interior of districts, might be further made useful in promoting the arbitration of disputes and claims of a civil nature, either by re-investing them with any special powers as arbitrators, or by empowering them to assemble Punchayets, as proposed in the fourth Article, above stated,* under the head of Civil Justice, and as put in operation at Fort Saint George by Regulation VII. 1816, enacted at that Presidency on the 17th May, 1816,† is, we conceive, too uncertain to admit of any confident expectation, (especially in the Lower Provinces,) although the importance of the object, as well as

* In Par. 5.

† It is entitled "A Regulation for authorizing District Moonsiffs to assemble District Punchayets for the adjudication of Civil suits for real and personal property, without limitation as to amount, or value, within their respective jurisdictions, and for defining the powers and authority to be vested in such District Punchayets."

as the sentiments and instructions of the Honorable Court of Directors, may suggest the propriety of a fair experiment.

74. The powers vested in the Native Commissioners, as arbitrators, by Section X. Regulation XL. 1793, and Section VIII. Regulation XVI. 1803, which enabled them to act as arbitrators in suits for money, or other personal property, not exceeding fifty Rupees, that might be voluntarily submitted to them by persons residing within, or without, the limits of their ordinary jurisdiction, were discontinued by Regulation XXIII. 1814, partly, we believe, from their having been found of little utility; and partly from their being considered unnecessary, when the whole of the Mofussil Native Commissioners were invested, as Moonsiffs, with original jurisdiction. We are not however, aware of any objection against their being empowered to act as arbitrators, in any disputes, or claims of a civil nature, which may be voluntarily submitted to them by parties, resident in any part of the Zillah or City Jurisdictions, in which they may be respectively employed, provided that regular arbitration bonds are entered into by persons competent to execute the same; and that a full discretion is reserved to the proper Zillah or City Court, to set aside the award if it appear manifestly erroneous, or unjust; or be clearly proved to have been obtained by corruption..

75. It may further be advisable to provide by a Regulation that the Moonsiffs shall, on all occasions of applications made to them, give their utmost assistance in promoting the adjustment of civil disputes by Punchayets; whether by convening such assemblies, according to established usage, at the desire of parties who may prefer a written request for that purpose; or by affording any proper aid to the Members of the Punchayet, when assembled, in enabling them to investigate and determine the case referred to them. The award given in such cases, might likewise be supported and enforced by the Moonsiff, when required, under rules and limitations similar to those prescribed in Section III. Regulation VI. 1813, and subject to the controul of the Zillah or City Court, in cases of corruption or of manifest error or injustice.

76. But for the reasons already stated, in the former part of this letter, relative to Village Punchayets, we have great doubt of the expediency of enacting, at this Presidency, rules for authorizing Moonsiffs to assemble Punchayets, corresponding with the whole of those established at Fort St. George, by Regulation VII. 1816; the third Section of which provides that "the District Punchayet shall be composed of the most respectable Inhabitants of the district, who shall be called upon to serve in rotation; and any Native Inhabitant refusing to serve in a District Punchayet, shall be liable to be fined at the discretion of the District Moonsiff, in a sum not exceeding ten

ten Arcot Rupees; which shall be levied, if necessary, by the District Moonsiff, under the provisions of Section LI. Regulation VI. 1816."

77. This rule is, in some degree, qualified by another clause in the same Section, which provides that "when the parties may desire it, they shall each name two Members, and the District Moonsiff shall name another person, who may be unobjected to by the parties, to form the Punchayet;" but it is added, "on all other occasions the whole shall be nominated by the district Moonsiff; the practice of the parties naming two Members each, shall never be allowed when it can be avoided;" the evident intention of which is to secure a more impartial Jury than can be expected from the choice of the parties. But however just this principle may be, we fear that the parties in civil disputes will seldom apply for arbitration, unless permitted to choose their own arbitrators, and that the respectable inhabitants who have been accustomed to give their voluntary assistance in holding Punchayets, when solicited by individuals, or invited by any local superiors possessing influence or authority, will feel dissatisfied at a compulsory requisition, under a penalty for refusal at the discretion of a Native Commissioner. It may further be apprehended that some of the Moonsiffs would abuse the powers thus vested in them; and thereby occasion an additional repugnance to Punchayets, instead of promoting them, as intended.

78. Unless therefore the result of actual experience under the Regulation for District Punchayets in force at Fort St. George, should recommend the enaction of similar provisions for convening Native Juries of the same description at this Presidency, we are of opinion that the object proposed by the Honorable Court of Directors, in facilitating and encouraging the adjustment of civil disputes by Punchayets, will be most effectually obtained by adhering, as far as practicable, to the customary mode of assembling and conducting them; and by restricting the interposition of the established Courts of Judicature, to causes in which their aid may be applied for, as suggested in the 75th paragraph of this address.

79. We have however intimated a doubt, whether any essential aid in the general administration of Civil Justice is to be expected from Punchayets, and in corroboration of this impression as it respects Bengal, (in the Western Provinces they are more in use,) we subjoin the following extract from the Report of the late Judge of the Zillah Mymensing, (Mr. Ewer,) dated 20th September, 1816, in addition to what has been already quoted from other Reports on the subject, in the former part of this letter.

"I am of opinion that the measure of settling disputes by means of the Punchayet,

chayet, would be productive of all the expected advantages; but I doubt the practicability of its adoption, and am certain that it would very rarely give satisfaction to the Natives of Bengal. Of those of the upper Provinces I know nothing. They have now, for many years, been accustomed to have their disputes investigated in a Court of Justice, by an officer appointed by Government for the express purpose, and who proceeds according to Regulations enacted by the Governor General in Council. Besides, the Moonsiff is in general a stranger and knows nothing of the parties or their dispute, till they come before him. They have therefore some little respect for his decisions; and (in this district at least) rarely appeal. Very different would be their opinion of the decrees of the Punchayet. The very circumstance of the Members of it being neighbours of the parties, and well acquainted with the cause of action, would render them liable to a charge of partiality; it would be speedily discovered that one was a relation or friend of the Plaintiff or Defendant; that another was an enemy; that another was bribed; and so on. If open to revision, every case would be appealed; and at all events the loser would take every opportunity of revenging himself on the Members of the Punchayet, for their unjust decision, which would thus become a source of endless quarrels."

80. For the further information of Government and of the Honorable Court of Directors on the subject of the Punchayet, as a tribunal recognized by the Hindoo Law, we beg leave to annex to this Report (Appendix, B.) the copy of a paper received, through our Chief Judge, from Mr. Henry Colebrooke. It appears from the authorities cited in this paper, that assemblies of the same tribe or profession assisted, when necessary, by persons learned in the Law, are expressly acknowledged as arbitrators for the adjustment of civil disputes, submitted to them by parties or referred to them by public authority; but that their awards were always open to revision on appeal to a superior assembly; or to the established Courts of Justice.

81. The suggestions of the Honorable Court of Directors, for a more strict limitation of appeals from the decisions of the Zillah and City Courts,* have been anticipated by the Report of the 1st and 2d Judges of the Sudder Dewanny Adawlut, dated 30th June 1814, (Paragraphs 15 and 23,) and by the provisions for regular and special appeals enacted in the seventh Clause of Section VIII. Regulation XXIV. 1814; in Section III. Regulation XXV. 1814; and in Section II. Regulation XXVI. 1814.

82. We are not aware of the necessity of imposing any further restriction upon

* See Fifth Article in Par. 5.

upon appeals from the Zillah and City Courts to the Provincial Courts. But we are of opinion that the jurisdiction of the Zillah and City Registers might be extended to the cognizance of original suits referred to them by the Judges, not exceeding in amount or value the sum of one thousand Rupees.

83. This would enable the Judges to give more of their time to the investigation of causes for an amount or value exceeding one thousand and not above ten thousand Rupees; (to which sum the original jurisdiction of the Zillah and City Judges is extended by Section II. Regulation XIX. 1817,) and to appeals from the decisions of their Registers, or of the Sudder Aumeens. The former of these can be tried by the Judges only; and it is desirable that they should, as far as practicable, try appeals from the decrees of the latter, both with a view to their having a frequent opportunity of inspecting the proceedings of the Native Commissioners acting under them, and also as the judgments passed upon such appeals are final, unless there appear to be special grounds for a second appeal under Section II. Regulation XXVI. 1814; and Section VII. Regulation XIX. 1817.

84. By extending the powers of the Zillah and City Registers to try original suits referred to them as proposed, some relief would likewise be given to the Provincial Courts by transferring to the Judges of the Zillah and City Courts, the regular appeals from decisions passed by their Registers, in suits for an amount or value exceeding five hundred and not more than one thousand Rupees.

85. The sixth proposition stated under the head of Civil Justice,* viz that the forms of pleading, proceeding and process, in the Civil Courts, be revised, with a view to their being rendered as summary as may be compatible with the ends of substantial justice, has been virtually adopted. This subject had been previously noticed by the Court of Directors, in their general letter, dated the 2d June, 1812, which was referred to this Court on the 17th July, 1813. The sentiments of the 1st and 2d Judges of the Court were submitted to Government, in the concluding part of their Report, dated the 30th June, 1814, (paragraph 101 to 115;) and such amendments, and additional rules, as appeared practicable and expedient for simplifying and abbreviating the pleadings, proceedings and processes of the Civil Courts, were enacted in Regulation XXVI. 1814.

86. The remarks of this Court on the general operation of the provisions contained in that Regulation, and in other Regulations passed at the same time, to be in force from the 1st February, 1815, were submitted to Government, with the half yearly

* In Par. 5.

yearly reports of depending causes, on the 4th June last. A modification of the rule contained in Section XI. Regulation XXVI. 1814, relative to the examination of witnesses upon interrogatories, was also suggested by this Court on the 28th August last, and had been enacted in Section XI. Regulation XIX. 1817.

87. We are not apprised that any further rules of pleading, proceeding or process for regular suits in the Civil Courts are at present called for: the reply and rejoinder in original suits (they are not required in appeals) might perhaps be dispensed with, as suggested by the Court of Directors; but for the reasons stated in the 104th and succeeding paragraphs of the report, of the 1st and 2d Judges of this Court before referred to, there does not appear to be any material objection to the existing rule, which directs that, "when the Defendant has delivered in his answer to the complaint, the Plaintiff is to reply to it, on the next Court day; but he is not to be permitted to introduce in his reply any matter whatever, which may not be contained in his complaint; but is either to acknowledge the answer of the Defendant to be true, or simply and shortly deny the truth of such of the facts in the answer, as he intends to dispute, or simply deny the truth of all the facts contained in it, or the competency of the answer. The Defendant is to rejoin to the reply on the same day; but is not to be permitted to introduce in his rejoinder any matter not contained in his answer, but is simply to deny the truth of the reply of the Plaintiff, or the parts of it which he means to dispute; and aver the truth, or competency of his own answer."

88. It is obvious that if the above rule (which is restricted to originate regular suits) be duly observed, no delay of consequence, in the trial of Civil causes, can arise from it; whilst at the same time, if kept within the prescribed limitation, the reply and rejoinder may often be of use to the Judges in carrying into effect the important rule* of proceeding contained in Section X. Regulation XXVI. 1814.

89. A further suggestion from the Honorable Court of Directors, "that it may not be necessary to take down in writing all depositions which are delivered orally in the Court,"† does not appear practicable in cases open to a regular appeal, as no opinion could be formed upon the merits of the original judgment without seeing the evidence upon which it was passed; it is not therefore applicable to any of the Courts of Civil judicature under this Presidency, as now constituted in the trial of

* This rule (which with other parts of the Regulations enacted at the same period, was suggested by the Chief Judge of the Sudder Dewanny Adawlut,) directs that in the trial of original suits and appeals, the prescribed pleadings shall be read before any exhibits are filed or witnesses summoned, that if the points at issue cannot be clearly ascertained from the pleadings, the Court shall make such inquiries as may appear necessary to ascertain the precise object of the action and the grounds on which it is maintained, and shall then record the point or points to be established by the parties respectively.

† Par. 5, Article 6.

of original regular suits, and could not perhaps be safely allowed in the trial of regular appeals from such suits; as a further revision may possibly become necessary on the admission of a second, or special appeal. There would however be less objection to the proposed dispensation with written depositions in such cases, when the witnesses may be examined by the Judge, or other presiding Officer of the Court, in person, as the rule now in force for admitting Second Appeals (Section II. Regulation XXVI. 1814,) assumes "all the facts of the case as stated in the decree."

90. Regulation XXVII. 1814, "for reducing into one Regulation, with amendments and modifications, the several rules passed, regarding the office of Vakeel or Native Pleader in the Courts of Civil Judicature," may be considered to have provided for the object intended by the *Seventh* Proposition, above stated, * relative to the employment of licensed Pleaders in the Civil Courts.

91. It must be admitted that the establishment of authorized pleaders, which was instituted in the Lower Provinces by Regulation VII. 1793, has not yet fulfilled the whole of the beneficial purposes intended by it, as set forth in the preamble to that Regulation. It has not been found possible to make the selection in all cases, or in general, from "men of character and education, versed in the Mahomedan or Hindoo Law, and in the Regulations passed by the British Government." Nor as far as we are able to judge from our own observation, have the diligent endeavours of many of the persons appointed, to qualify themselves for their situations and do justice to their employers, been such as might reasonably have been expected. Still however we are of opinion, that much facility is given to the administration of Civil Justice by their constant attendance; and that the practical knowledge which some of them have obtained of the Laws and Regulations, is not without its use as well to the Judicial Officers as to the parties in suits. That instances of abuse and misconduct have occurred amongst them, as intimated by the Honorable Court, cannot be denied; but we have no reason to suppose such instances frequent, or that on a general view of the advantages and disadvantages arising from the employment of licensed pleaders, as now regulated, there is any sufficient reason for discontinuing them. On the contrary, we should consider the loss of them a material detriment to the established system of Civil Judicature, and should apprehend a recurrence of the many serious evils, which preceded their institution, as enumerated in the preamble to the Regulation already mentioned.

92. On the *eighth* suggestion, under the head of Civil Justice, viz. "† that the expences

* In, Par. 5.
† Par. 6.

expences of a trial in the Zillah and City Courts be reduced, if thought too considerable," it appears sufficient to remark, that we have no information, or reason, to believe, that the present authorized stamp duties and fees of pleaders as they affect the usual costs of suit in the Zillah and City Courts, are oppressive, or such as to discourage the prosecution of just claims. The stamp duty substituted for the Institution fee by Section XIII. Regulation I. 1814, as well as the pleader's fee, in regular suits, fixed by Section XXV. Regulation XXVII. 1814, must always be proportionate to the cause of action; and the payment of both may be dispensed with, in cases of ascertained poverty, under the provisions of Regulation XXVIII. 1814. Section II. Regulation III. 1817, has extended to all original suits and appeals, instituted in those Courts, for an amount or value not exceeding sixty-four Rupees, the exemption from stamp paper for pleadings, and durkhasts for witnesses or exhibits, which had been granted to suits for the same amount in the Courts of the Moonsiffs, by the provisions of Regulation XXIII. 1814. Section III. of the same Regulation, has likewise extended to appeals from decisions of the Sudder Aumeens, which may be referred to the Registers, the lower rates of stamp duty payable on pleadings and durkhasts, in the Register's Court, under Sections XV. XVI. and XVII. Regulation I. 1814. And we are not aware that any of the other rules in force on the subject require modification. Some inconvenience attending the deposit of the fees of pleaders in pursuance of the First Clause of Section XXIII. Regulation XXVII. 1814, was indeed noticed in the remarks of the Court on the half yearly Reports, submitted to Government on the 4th June last; but on consideration of the general beneficial tendency of the Clause above-mentioned; and that an option is given to plead in person when it may not be convenient to deposit the fee of a pleader, the Court did not judge it expedient to propose an alteration of the rule for deposits as now established.

93. The *ninth* proposition,* which includes a modified re-establishment of the Maul Adawlut under the Collectors, subject to appeal, or the institution of a regular suit, in the Civil Courts of Justice, has already received the deliberate consideration of two of the Judges of this Court, whose Report was submitted to Government on the 30th October, 1816.

94. In that Report the 1st and 2d Judges of the Court stated their full concurrence in the sentiments expressed by the Honorable Court of Directors, (in the 81st paragraph of the general letter, dated the 9th November, 1814,) as far as they respect a prompt and summary process, under the authority of the Collectors in the first instance, (but subject to revision by a regular suit in the Civil Courts,) for enabling the Land-holders on the one hand, to collect the rents due

* See Par. 5.

due to them from their under-tenants, and fulfil their own engagements with Government; and on the other hand, to protect the cultivators and other under-tenants from the exactions of Land-holders and Farmers.

95. At the same time the present duties of the Collectors in many districts, especially in the upper Provinces, where the land assessment has not been fixed in perpetuity, and in the Province of Benares, where there is only one Collector for three Zillahs, appeared to oppose an insuperable obstacle against the immediate transfer of all the numerous suits between landlord and tenant to the exclusive cognizance of the Revenue Officers, as proposed in a Regulation suggested by the Board of Commissioners for the Western Provinces; and other strong objections were likewise brought forward to such an arrangement, founded both on general principles, and on the communications of the Judicial Officers who were consulted upon the subject.

96. The measures which occurred to the Court as best calculated for carrying the intention of the Honorable Court of Directors into effect, under the existing circumstances of the Country, were detailed in twelve propositions, which are still under the consideration of Government; though in Mr. Secretary Bayley's letter of the 4th July, 1817, (paragraphs 22, 23,) the Court were informed that under the progress made in reducing the arrears of business in the several Civil Courts, with the prospect of a further reduction under the full operation of Regulation XXIII. to XXVIII. 1814, "and adverting to the numerous objections urged in the documents submitted by the Court of Sudder Dewanny Adawlut against the re-establishment of the Maul Adawluts, according to their original constitution, the Governor General in Council is of opinion, that it will be expedient to suspend the adoption of any immediate arrangements, founded on the letter and documents in question."

97. It was added (in paragraph 24,) "A further experience of one or two years will enable Government to form a more satisfactory judgment of the degree in which it may be eventually necessary to employ the aid and agency of the Revenue Officers in the investigation of Civil suits; and the subject is in fact so closely connected with any measures which may be eventually adopted, in consequence of the letter from the Honorable Court of Directors, under date the 9th November 1814, that it would be premature to sanction even a modified re-establishment of the Maul Adawluts, until the question of vesting the Collectors with the functions of Magistrate be finally determined."

98. The tenth proposition stated under the head of Civil Justice,* is, "that disputes

* In Par. 5.

disputes respecting boundaries be also brought within the jurisdiction of the Collector, with the option of a Punchayet, when desired by the parties; and that all decisions and awards passed in such cases, be duly recorded in the Village and Pergunnah Registers."

99. It does not appear to be intended by the Honorable Court of Directors, that the Collectors should possess exclusive and final cognizance of the disputes here referred to; on the contrary, the 82d paragraph of their general letter, dated the 9th November 1814, is in the following terms: "By Regulation VI. of 1813, which has just reached us, we find you have made provision under Section III. for settling disputes respecting property in land, by means of private Arbitrators, chosen by the parties, and for the enforcement of the awards in such cases by the Zillah Courts. It is unnecessary for us to say that we highly approve of this Regulation, or that we do not see any sort of objection to the power you have given to the Zillah Judges to enforce the execution of decisions thus pronounced: we are nevertheless clearly of opinion that, where the parties in cases of the above description may prefer the decision of a Collector, either with or without a Punchayet, the option should be afforded them. We here refer to disputes which do not involve an affray, or at least in which no lives are lost or persons wounded, which we take to be such, as are in the contemplation of the 3d Section of the Regulation just referred to. Here the question would be tried before those who have to decide upon it, as a dry matter of personal right, and the investigation would be confined to the pure merits of it. But where the dispute may lead to serious breaches of the peace, so as to come within the notice of the Magistrate, it would be exclusively cognizable by the Collector, to whom we intend that the charge of the Police should be entrusted."

100. Without anticipating, in this place, a consideration of the proposed transfer of the Police to the Collector, it will be sufficient to remark on the above Extract, that we see no objection to the Collectors being authorized to arbitrate in boundary disputes, or to assemble a Punchayet for the arbitration of them; when the parties in such cases may expressly apply to him for the purpose. The award given by the Collector, or by the Punchayet under his superintendence, might also be carried into effect, without application to the Civil Court, if not objected to by either of the parties; or if the party against whom the award is given refuse to perform it, and the Collector have himself given the award, or see no ground to impeach the fairness of an award given by the Punchayet, he might be empowered to enforce it by summary process, in like manner as private awards are enforceable by a summary process of the Civil Courts, under the Second Clause of Section III. Regulation VI. 1813, leaving either party dissatisfied with his decision

sion, or that of the Punchayet, to the institution of a suit in the Civil Court.

101. We are further of opinion that the Judges and Magistrates, before whom boundary disputes, or any disputes respecting the property or possession of land crops, or water-courses may be depending, should be authorized to refer the same for adjustment by the Collectors (as suggested by Mr. Fortescue, and approved by the Honorable Court of Directors) in cases, when from local deputations of the Collectors, or other special circumstances, such mode of adjustment may appear conducive to the ends of Justice, and particularly to the speedy determination of the rights of the contending parties in the cases referred to.

102. But in affrays and all breaches or disturbances of the peace, connected with disputes of the above description, it is necessary to maintain full authority in the hands of the Magistrate, or whoever may have charge of the Police, to make immediate inquiry into the fact of actual possession before the dispute; and to provide for the peaceable occupancy of one of the claimants; or, if requisite, the attachment of the disputed land, until the rights of the parties can be duly investigated and regularly decided. On this subject, and on the operation of the provisions now in force, for the purpose above stated, we beg leave to subjoin the following Extract of a letter from the late Judge and Magistrate of Rajshahye, (Mr. H. Shakespear,) dated the 25th January 1816, and submitted to Government on the 6th December following. " The evils noticed by the Honorable Court, arising from affrays respecting boundaries of land and crops, are of a most baneful tendency and call loudly for correction. They are not only destructive to the peace and quiet of the community, but there is not a dispute of this kind brought before our Courts, where evidence is examined on both sides, in which the whole of the witnesses on one side or the other, do not deliberately perjure themselves in deposing to the previous possession of the parties and the cultivation of the contested land. In order to check the prevalency of these affrays, a prompt decision on the point of previous possession, and the bringing to trial persons concerned directly or indirectly, in instigating and promoting them, are of primary importance. Should the management of the Police be placed in the hands of the Collectors, the summary investigation and decision of these disputes should also be vested in them: there is reason to suppose that they will have more time to bring them to an earlier determination than the Judges have at present; and the Police of a district is so intimately connected with, and so dependant upon, the control which the Magistrate possesses over the conduct of the Zemindars, that it would in my humble opinion be highly impolitic to place them under different authorities. It does not appear to me that the provisions of Regulation VI. 1813, have had the effect of checking these disputes, or of bringing them to a more speedy decision.

I have never known a case in which the parties have submitted their differences to arbitration, in conformity to Section III. of that Regulation; and a difficulty always occurs in serving the notification on the parties, agreeably to Clause 1st Section V. and, as there is neither Plaintiff nor Defendant in the case, it generally happens that neither of them attend, without which no investigation can be gone into. The matter in dispute was more promptly decided upon under the Circular Orders of the Nizamut Adawlut, dated 19th April, 1809, and 27th June, 1809, by which the Magistrate determined the point of possession in the Foujdary Court, and certified a copy of his proceedings to the judge, by whom the final order for any change of possession was passed in the Civil Court.

103. The Circular Orders referred to in the above Extract, are inserted in the printed compilations of Circular Orders issued by the Courts of Nizamut Adawlut and Sudder Dewanny Adawlut; viz. in page 2d of the former, under the head of *Affrays*; and in page 88 of the latter, under the title of Summary Suits. In the first of these orders, the Magistrates were informed, "that the Court of Nizamut Adawlut would expect their prompt interposition whenever they might receive information of the probability of affrays; and that they will not on such occasions content themselves with merely preventing the immediate mischief, but also take the proper measures for determining the question of possession, till the right of the parties can be legally determined, so as to remove all pretext for disputes during the interval." In the second order, it was explained, that the preceding instructions "were not meant to alter the mode of proceeding in the Civil Court, directed by Regulation XLIX. 1793, in cases to which the provisions in that Regulation may be applicable;" that, "on information of expected affrays on account of disputed lands or crops, the first process must always be in the Foujdaree Department;" and that "it is of little consequence in which Department any subsequent proceedings may be held, so that the final order for any change of possession, under the provisions of Regulation XLIX. 1793, be passed in the Civil Court, as required by that Regulation."

104. In revising the whole of the rules in force, relative to forceable dispossession from land, or disturbance of the actual possession of lands or crops, with the amendments and additional provisions which are now under the consideration of Government, it may be useful to provide more specifically for the inquiry to be made and powers exercised by the Magistrate; with a view to ascertain the fact of previous possession; and to maintain the actual occupant, until the question of right can be determined. It would perhaps be advisable, that the decision upon this point should be left with the Magistrate, as being immediately connected with the peace of the Country, and as his examination into the circumstances of the affray,

or

or other breach of the peace, within his regular cognizance, would, in general, enable him to ascertain by which of the parties the lands or crop in dispute was previously possessed.

105. In revising the provisions of Regulation VI. 1813. with the construction given to Sections III. and V. of that Regulation, in the Circular Order of the Sudder Dewanny Adawlut, dated 24th February, 1816,* it may further merit consideration, whether for the greater encouragement of private arbitration, and with a view to reduce the number of regular suits, a summary appeal should be allowed, instead of the institution of a regular suit, to set aside a private award summarily confirmed by a Zillah or City Court, when the award may be objected to as obtained by corruption, or as being manifestly erroneous or unjust. With a view to assist the determination of Government upon this point, we have the honor to submit (Appendix C.) an Extract from the Proceedings of the Sudder Dewanny Adawlut on the construction above mentioned.

106. The eleventh proposition, under the head of Civil Justice,† for enforcing an observance of the Regulations enacted respecting Pottahs, for revising and amending the rules in force relative to distraint for arrears of rent, and for placing the whole of this important concern under the superintendance of the Collectors, has been partly anticipated by the remarks and suggestions of the First and Second Judges of this Court, on the proposed re-establishment of the Maul Adawlut, and by the Register's letter which accompanied them, under date the 30th October, 1816.

107. In the 4th and 5th Paragraphs of that letter it was observed, that "the rules for the recovery of arrears of rent by distress and sale of personal property, which were enacted for the Lower Provinces in Regulation XVII. 1793, having been materially altered and modified by Regulation XXXV. 1795; Regulation VII. 1799; and Section XII. to XIX. of Regulation V. 1812; (as well as by Section VIII. Regulation III. 1812;) on this account, as well as with a view to provide for a summary action in the Maul Adawlut, in the first instance, in cases wherein redress can now be had only by a summary or regular suit in the Dewanny Adawlut, it appears to the Court advisable, that the whole of the rules in force, for the recovery of arrears of rent by summary process, should be revised, and brought into one Regulation. It appearing from some of the answers of the Zillah and City Judges to the instructions issued to them on the 1st July, as well as from other communications which are known to have been made to Government (particularly by Mr. Sisson, late Officiating Judge and Magistrate of Dinagepore) that the provisions contained in Section III. to X of Regulation V. 1812, though intended for the protection of the under-

tenants

* See printed Circular Orders of Sudder Dewanny Adawlut, page 91.
† Par. 5.

tenants of land, and to supply the place of established Purgunnah rates, (according to which the Ryots are entitled to demand new Pottahs,) when no such rates might be known to exist, have been misunderstood, and perverted; the Court beg leave to suggest that it may be further expedient to revise the rules contained in the Sections last mentioned; to explain what has been found obscure in them; and to add any other rules which may appear conducive to the accomplishment of the important object proposed by them."

108. In the same letter, after noticing Mr. H. Colebrooke's Minute, submitted to Government by the Board of Revenue, on the 13th June, 1815, it was added, "the Court are willing to hope that the general re-establishment of the office of Pergunnah Canoongo, with the reformation of that of Village Putwaree, provided due attention be paid to the punctual execution of their prescribed duties by the Collectors and superior Revenue authorities, will save the necessity of attempting to define by legislative enactments the various rights and tenures of the several descriptions of under-tenants, in the different Provinces under this Presidency. The Court entertain no doubt whatever of the perfect right of Government to exercise, with equity, and with a just regard to established usage, the power expressly reserved to it by the proclamation issued to the land-holders on the conclusion of a permanent settlement, and subsequently embodied in the Regulations throughout the Provinces, viz. "to enact such Regulations as the Governor General in Council may think necessary for the protection and welfare of the dependant Talookdars, Ryots, and other cultivators of the soil." But they apprehend that the same difficulties, which were experienced in framing any definite general rules on this delicate and important subject, at the time of concluding the permanent settlement for the lower Provinces, will still be found to obstruct the formation of any comprehensive, discriminating, and practical system, with due knowledge and consideration of the rights of all the parties concerned. On this point however a better judgment may be formed, when the Board of Commissioners shall report the result of their inquiries into the rates and mode of assessment of the Village rents, whether receivable in kind, or commutable for a money compensation or original money rents, as promised in the concluding paragraph of their letter, dated the 24th November, 1815."

109. The instructions of the Honorable Court of Directors in the 87th Paragraph of their general letter to this Government, dated the 9th November, 1814, are indeed restricted to a more limited object. The terms of that paragraph are: "we also direct that similar measures to those which we have pointed out in our Judicial Despatch to Fort Saint George of the 29th April last, for the due enforcement of the Pottah Regulation, and for placing the superintendence of this concern

concern in the hands of the Collector, be adopted within the territories under your Government."

110. The following is an Extract from the letter to Fort Saint George here referred to: " we cannot pass by this opportunity of recalling to your attention the observations contained in our Revenue letter of the 16th December, 1812, as to the enforcement of the Regulation concerning *Pottahs*; a strict observance of that Regulation would tend, we are convinced, equally to the benefit of the Landholders and their Tenants, by rendering their respective rights and obligations more certain; it would facilitate the adjustment of disputes concerning rent or cultivation, and would thereby operate as an additional relief to the Courts of Justice. We trust that, in consequence of our former reference to this subject, it has already occupied your attention. We are of opinion also that the Regulations relating to *distraints* require revision and amendments, the power of distraint without Judicial process, which is given by Regulation XXVIII of 1802, is admitted to be one of the severest oppressions to which Ryots and others can be exposed. The Pottah Regulation, duly observed, would afford the best safeguard against such oppression, and would have the effect of preventing in a great degree, those disputes respecting rent, by which the country is so frequently disturbed. The enforcement of it is a concern of Government, and the means of carrying it into execution ought to be secured by an adequate process. The superintendence of this matter naturally falls on the Collector, in his Magisterial capacity, whose duty it would be, with the assistance of the Native Officers under him, to take cognizance of any breach of this Regulation, whether by the refusal or neglect to grant Pottahs. No demand of a Zemindar, &c. for arrears of rent, should be recoverable in any Court, but on a Pottah; nor should he be at liberty to proceed to sell under distraint without an order from the Collector, founded (if that should be necessary) upon a report from the Potail or Tehsildar, and Village and District Punchayet respectively. In furnishing you with these instructions for the enforcement of Pottahs, we think it proper at the same time to declare, that we by no means intend that the Zemindar should be released from the provisions of the existing Law, as to the rates of assessment on the land; but that he be equally liable as before to the penalties attendant upon an infringement of them."

111. We entirely concur in the beneficial consequences to be expected from the enforcement, as far as practicable, of specific engagements between the Landholders and their Tenants. But it has been found that the Ryots are, in many instances, equally unwilling to enter into such engagements, as the Zemindars, and Talookdars. This reluctance, and the causes of it, are stated at length in Lord Teignmouth's Minute on the permanent settlement of Bengal, dated the

28th

28th June, 1789, as well as in various other Public Documents.* The 4th Judge of the Barelly Provincial Court (Mr. Charles Elliott) in his Minute of the 8th February, 1816, submitted to Government on the 6th December following, has likewise offered the following remarks. " More than half of the suits in our Civil Courts, and a large proportion of the disputes which come before our Criminal Courts, are directly, on indirectly connected with the land, and the grand cause of most of these disputes I have found to be the want of written agreements between the Zemindars and the Ryots. The former willingly allow the Ryots to cultivate without executing Kubooleuts, because in the event of a good crop, it affords them a plea to demand more than the Ryots would have agreed to pay at the commencement of the season. The latter are equally willing to cultivate, without requiring Pottahs from the Zemindars, as it enables them to dispute the demand when the crop becomes ripe. By enforcing a strict adherence to that clause in the Zemindar's Kubooleut, whereby he engages to grant Pottahs to, and take Kubooleuts from his Ryots, and punishing in the Criminal Court all those who forcibly attempt to cultivate without leases, the ground of quarrel would be nipt in the bud; in a short time, the number of affrays would decrease, and the summary suits would be so few that they would be decided as soon as the attendance of the necessary witnesses could be obtained. This plan I have tried and found efficacious; and I think that no man should be allowed to distrain for rent, or to sue for arrears on a summary process unless he produce the Kubooleut of the Ryot against whom his claim lies."

112. Mr. Elliot's last suggestion corresponds in substance with that of the Hon'ble Court of Directors, that " no demand of a Zemindar, &c. for arrears of rent, should be recoverable in any Court but on a Pottah;" except that he proposes to restrict the non-recovery, without an engagement from the Ryot, to the process of distraint, or other summary process, and if any specific penal rule, to the effect proposed, be judged expedient, in addition to the provisions against enhanced demands of rent, without written engagements, contained in Sections IX. and X. Regulation V. 1812, it may be proper, with a view to guard against loss and embarrassment to the Land-holders from the want of good faith on the part of their tenants, that the disability to recover arrears of rent without the execution of specific engagements should not extend, at present, beyond the process of distraint, or other authorized summary process for the speedy realization of such arrears. At all events, whilst the Ryots continue averse, from whatever motive, to enter into such engagements, it will be necessary to protect the Land-holders from an ultimate deprivation of their just rents, by a provision correspon-

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* A letter from Mr. A Seton, Collector of the district of Behar, dated the 6th January 1793, and quoted in a note to the third volume of Mr. Harington's Analysis, page 424, describes fully the unwillingness of the Ryots, in the district abovementioned, to receive Pottahs, and the grounds of it.

ding in substance with Section V. Regulation IV. 1794, or the written notice provided for in Sections IX. and X. Regulation V. 1812; and as a means of inducing the Ryots to receive and demand a Pottah, or other written document, by which the rents payable by them can be clearly ascertained, it may be advisable to require the production of such, in support of any complaints of exaction on summary process.

113. The Honorable the Court of Directors have further proposed, in their letter to Fort St. George, that the Land-holders "should not be at liberty to proceed to sell under distraint, without an order from the Collector, founded (if necessary) upon a report from the Potail, or Tehsildar, and Village and District Punchayet respectively." But however applicable such a course of proceeding may be to the state of the country under the Madras Presidency, we apprehend that it would occasion too much delay in the recovery of arrears of rent in these provinces; whilst at the same time, the object of it appears to be provided for by Sections XV. and XVI. Regulation V. 1812; which enable Ryots, and other Tenants, to stay the sale of distrained property, and remove the attachment of it, by engaging before the Judge or Collector of the Zillah, the Cauzy of the Purgunnah, the Commissioner, or other person vested with power to sell distrained property, or before the distrainer himself, (with security if not previously given for the rent) to institute a Suit, (declared summary by Section XX. of the same Regulation) within fifteen days, for trial of the demand and payment of what may be adjudged due, with interest.

114. These provisions, with an exception to the summary suit not before extended to such cases, correspond in substance with the original rules contained in Sections IX. and X. Regulation XVII. 1793; which were rescinded by Section II. Regulation XXXV. 1795, (not by Regulation VII. 1799, as the Court of Directors appear to have supposed in the 6th Paragraph of their general letter, dated 9th November, 1814,) on the grounds stated in the preamble to that Regulation, viz. that they had "been found to counteract the object of Regulation XVII. 1793, by the delay often unavoidable in bringing suits to a conclusion, and the opportunity which they afford to defaulters, of protracting the discharge of just demands." But, as stated by the Honorable Court (in the paragraph above noticed) "the power thus vested in the Zemindars, for enforcing their claims on the Ryots, whilst it had the effect of relieving them from those impediments to the realization of their collections, to which they were before subject, left the cultivators at large very much at their mercy."—The preamble to Regulation V. 1812, states, "there were grounds to believe that considerable abuses and oppression had been committed by Zemindars, Talookdars and Farmers of land, in the exer-

cise

cise of the powers vested in them, with respect to the distress and sale of the property of their Tenants for the recovery of arrears of rent;" and on these grounds, the original provisions in favor of the Ryots, were restored, as already mentioned by Sections XV. and XVI. of that Regulation, with a further provision for a summary suit, which is beneficial to both Landholders and Tenants; and may perhaps be rendered still more so by enabling the Collectors to take cognizance of it, without reference from the Civil Court; the parties being at the same time at liberty, if they prefer it, to institute a regular suit before the local Moonsiff, or in the Zillah or City Civil Court.

115. Some of the Judicial Officers are of opinion that the rules for staying the sale of distrained property now in force, have given too great an advantage to the Ryots against the Zemindars. Mr. Fortescue, Officiating Judge of the Benares Provincial Court, in his Minute dated the 20th of February, 1816, observes, "The Ryots have now got not only a counter force (by Regulation V. of 1812,) for paralyzing the power of the Zemindars (by Regulation VII. of 1799,) but also for retaliating--The preponderance is at present decidedly on the side of the Ryot. The prosecutor (the Ryot) has now, under Regulation V. of 1812, every advantage in delaying the suit when he is wrong; for the simple interest and light charges of Court that may be decreed against him, are infinitely less than the interest he would have to pay to a surety for his revenue to the Zemindar, before the latter would allow him to cut his crop." After some further observations Mr. Fortescue concludes, "were the principle of fair dealing between the Zemindars and the Ryots more prevalent, and the latter better able to appreciate his true interest than he is, the *Replevin* Regulation would have many advantages: but taking things as they are, I conceive that the immediate trial of the Ryot's complaint on institution before the Native Commissioner in his neighbourhood, will be, according to the present state of Society, the utmost, safest, and most adequate relief that can be afforded."

116. We are rather disposed however to adopt the sentiments of Mr. H. Shakespear, late Judge and Magistrate of Zillah Rajshahy, as conveyed in the following Extract from his letter of 25th January, 1816; except that he has made the same mistake, as that already adverted to, respecting the powers of distraint, which he mentions as given by Regulation VII. 1799, instead of Regulations XVII. 1793, and XXXV. 1795: "That the powers of distraint granted to Zemindars by Regulation VII. 1799, have given rise to, and do still occasion, notwithstanding the provisions of Regulation V. 1812, severe injuries and hardships to the Ryots, is a position that no one conversant with the mode pursued in collecting the revenues of this province, will dispute. It is almost a universal practice to collect the rent when the crop is on the ground, and not to allow it to be cut, until the demands of the

the Zemindar, however exorbitant, have been acceded to, or compromised. After which it is in vain that the Ryot seeks redress for the exaction; not one in fifty can afford time and money to carry a suit through the Moonsiff's Court; through the Sudder Aumeen's Court in appeal, and perhaps through a special appeal to the Judge. The Zemindar, with comparatively trifling inconvenience, will harass and distress him at every stage of the trial, and will perhaps at last avoid making good the decree, should it terminate in the Ryot's favor. The rule of Section XIII. Regulation V. 1812, directing that the Zemindar shall serve the Tenant with a written demand for the arrear claimed from him, is seldom or never attended to; and it is by no means uncommon for Zemindars to keep the crops on the ground till they are spoiled, or sell them or other property, without making application to the Commissioner to bring it to sale. I am of opinion that the Landholder, or his agent, so conducting themselves, should be declared liable to a specific and severe punishment, and that Commissioners, and Police Darogahs, should be empowered to release any crop or property from distraint, when it may appear that the attachment had been made for five or ten days without an application being presented to the Commissioner for the sale of it. If the Zemindar attaches the property of a Tenant without specifying his demand, the latter cannot tender security to the Commissioner, or the Judge, in any specific amount; and in that case the Ryot ought to have the power of compelling the Zemindar to declare the amount, or to withdraw the attachment. Considering the above mentioned orders to be within the spirit of the Regulation, I have issued them to the Commssioners and Police Darogahs of this district, and I understand they have been the means of relieving the Ryots in a great measure from the arbitrary exactions of the Zemindars. No redress is provided by this Regulation for farmers, kutkinadars, and under tenants of that description, when their whole farm is attached for arrears of revenue. If the Zemindar wishes to turn out one of these, he alleges the farm to be in balance; sends out a Koork-Surzawal (or person deputed to attach the whole farm, and take the management of it into his own hands,) who proceeds to collect the revenues and to harass and distress the Ryots; who have been most probably left without receipts or any kind of vouchers, to shew what they have already paid to the farmer. The power of ousting defaulting farmers, granted by Clause VII. Section XV. Regulation VII. 1799, is liable to great abuse; tends to encourage a breach of good faith between the proprietor and his farmer, and to weaken that security in landed property, which is the first object of the Regulations to strengthen and promote; and though it is provided in what manner a Tenant unjustly ousted may recover his right, if infringed, yet the process of a regular suit is too tedious, and the benefit too remote to allow of many pursuing it. It is provided in Sections XV. and XVI. Regulation V. 1812, that if an attachment of property or crops, of any Tenant of whatever description, shall have been made, the Tenant disputing the justness of the demand shall give security, and bind himself to prosecute the claim within 15 days at the Zillah Court; and on his doing so, that the

attachment

attachment shall be withdrawn; but no notice whatever is taken of the attachment of the whole farm. A clause requiring the farmer to enter into a similar bond to prosecute the claim of the Zemindar, on a Koork-Suzawal being sent to collect the revenue of his farm, for an unjust demand of arrears, would check the abuse, and be the means of preventing many serious affrays. It is certainly desirable that there should be some more simple methods of settling suits for undue exactions on the part of the Landholders; but so long as the Zemindars are charged with a heavy interest, or failing to discharge their monthly instalments; and their estates subject to be sold by public auction for arrears; I do not see how the Zemindars can be fairly deprived of the powers of distraint, which they at present possess; or what more simple and expeditious method, with a due regard to their interests, can be adopted for the trial of these suits, than those already provided for by Regulation V. 1812."

117. We shall add only on the question of Summary Processes for arrears of rent, that some additional provisions have been recently enacted in Section XIII. to XVI. of Regulation XIX. 1817, and that others contained in Section XVII. to XXI. of the draught of a Regulation submitted by this Court to Government, on the 28th August last, are still under consideration. The provisions in one of those Sections are expressly meant to obviate the abuse, noticed by Mr. Shakespear, of the power to remove defaulting under-renters, without previous application to the Courts of Justice; a just use of which by the Landholders and farmers of land is recognized in the seventh Clause of Section XV. Regulation VII. 1799.

118. The remarks and suggestions of the Court of Nizamut Adawlut, which were submitted to Government on the 16th September 1816, upon a Regulation proposed by Mr. J. Shakespear, Superintendant of Police in the Western Provinces, "for the establishment and support of Chowdries of Professions," and a separate report, which will be made by the Court of Sudder Dewanny Adawlut (in answer to a reference from Government under date the 25th of September, 1815,) on the operation of the provisions in the existing Regulations, by which the Civil Courts are empowered to take cognizance of suits and complaints regarding caste, render it unnecessary to state any thing in this place on the subject of the twelfth and last propositions specified in the fifth paragraph of this address.

119. It remains only under the head of Civil Justice, to notice the suggestion adverted to in the sixth paragraph, for the constitution of a separate Court of Sudder Dewanny Adawlut, to consist of two Judges.

120. We understand this proposition to be distinct from that which was considered in the Proceedings of the Nizamut Adawlut, under date the 24th February, 1816, (paragraph 18 to 41) on a Report from Mr. C. Smith, 2d Judge of the Benares

nares Court of Circuit, viz. the institution of a second Court of Sudder, Dewanny and Nizamut Adawlut for the Upper Provinces. The measure suggested by the Honorable Court of Directors (in the 66th paragraph of their General Letter, dated the 9th November 1814) appears to be the separation of the two Courts of Sudder Dewanny and Nizamut Adawlut, now under the same Judges, Law Officers, Register and other Ministerial Officers; and to establish at the Presidency a distinct Court of Sudder Dewanny Adawlut, for which it is stated "two Judges, a Register and Assistant, with a proportionate Native establishment, would be amply sufficient."

121. But to such an arrangement the following objections occur. In the first place, the Court could not be composed of less than three Judges, without giving a casting voice to the chief Judge, whenever a difference of opinion might arise, which would obviously be objectionable in a Supreme Court of Civil Judicature, whose revisions are final and conclusive in all cases below five thousand pounds, the limitation of Appeals to His Majesty in Council.

Secondly. For a similar reason, it would be requisite that the Court of Nizamut Adawlut should also consist of three Judges, so that the two Courts, which now consist of five Judges (of whom one is officiating only) would on their separation, require six Judges.

Thirdly. The appointment of two Registers, and a distinct establishment of Law and Ministerial Officers, as well as the necessity of a separate Court-house, must occasion a further considerable addition of expense.

Fourthly. Whilst the offices of Zillah and City Judge and Magistrate are held by the same person, and the Judges of the Courts of Circuit are also Judges of the Provincial Civil Court, a convenience of reference, and facility of control, are connected with the union of the two superior Civil and Criminal Courts, which would be lost if these Courts were placed under the superintendence of distinct Judges.

122. We are at the same time of opinion that some advantages would be gained by a separation of the Sudder Dewanny Adawlut and Nizamut Adawlut, supposing each Court to consist of three Judges. It would, in the first place, bring to the general administration of justice, in the two Courts, the strength and aid of an additional Judge. It might also, we think, promote the regularity and dispatch of business in the two Departments, by the undivided attention of the Judges and officers to a distinct branch of duties; though, on this point, some doubt might be suggested by recent experience.

123. In the proceedings of the Nizamut Adawlut already adverted to (under date the 24th February 1816,) with a view to the speedy determination of the heavy arrear of

Civil

Civil causes, and Criminal trials, then depending, as well as to prevent a further accumulation, the Court thought it incumbent upon them "to suggest for the consideration of Government, the expediency of appointing, temporarily or permanently, an additional Judge of the Courts of Sudder Dewanny and Nizamut Adawlut; besides an Officiating Judge, during the absence of Mr. Stuart from indisposition." It was observed that "this augmentation of the number of Judges would admit of two being constantly engaged in the Sittings of the Civil Court, whilst the other Judges might hold the Sittings of the Criminal Court, and transact the English business of both Courts, in such manner as might be found most conducive to regularity and dispatch." And it was added "that this arrangement, including the permanent addition of a Fifth Judge, would be less expensive than the creation of a new Court; which must require, at least two Judges, in addition to the present four; besides a separate Register and establishment, and an additional Court-house."

124. In compliance with the above suggestion, His Excellency the Governor General in Council was pleased to appoint Mr. Oswald to officiate as a Judge of the Sudder Dewanny Adawlut and Nizamut Adawlut, on the 8th March, 1816; though from being engaged at the time on the Benares Circuit, Mr. Oswald was not able to join the Court till the 7th August following. The principles of an arrangement (as suggested by the Nizamut Adawlut,) for expediting the business of the two Courts, by a division of it between the five Judges; with their occasional co-operation, in cases of difficulty or importance, were, at the same time stated by Government for the consideration of the Courts; and were in substance, adopted by them, as detailed in their proceedings of the 18th March, 1816, by the resolutions then passed for conducting the business of the Sudder Dewanny Adawlut and Nizamut Adawlut, from the commencement of the ensuing month.

125. Under this arrangement which has been adhered to, as far as the number of Judges actually present would admit of it, two of the five Judges hold the daily sittings of the Civil Court on the trial of Appeals, and they are joined by a third, when required. In like manner two of the Judges, with the occasional assistance of a third, sit upon the Criminal trials, and also superintend the miscellaneous business, Civil and Criminal, of the open Court, (including the admission of appeals, returns to orders and petitions of all descriptions;) whilst the chief Judge, besides giving his occasional aid, when called for, in each of the Departments above noticed, carries on the English correspondence; and with the Register, conducts the whole of the miscellaneous business recorded in the English Department; taking the advice and opinions of the other Judges, or of such of them as can most conveniently sit with him, on all matters that require the decision of two or more Judges; or though within the competency of a single Judge, appear from their importance, or otherwise, to require collective deliberation.

126.

126. The success of this arrangement was reported to Government on the 2d July last, in the following terms.

" On the 1st of April, 1816, the number of regular Criminal trials depending before the Nizamut Adawlut, amounted to 178; besides 17 miscellaneous cases. This heavy arrear was gradually reduced between April and December 1816, and the Court had the satisfaction of reporting on the 8th January last, that at the beginning of the present year, not a single criminal trial was depending before the Court: since that period, no delay of importance has occurred in deciding the Criminal trials brought under the cognizance of the Court, although the number of regular trials referred in the last six months, viz. 256, considerably exceeded the half yearly average of 1815, and 1816; (which of regular trials, was 189 only;) and His Excellency the Governor General in Council will observe from the accompanying statement that on the 1st instant, no Criminal trial was depending before the Nizamut Adawlut. The aggregate number of trials decided by the Court during the period of 15 months, which has elapsed since the 1st April 1816, is as follows.

Regular Trials, ...	697
Miscellaneous Cases,	50
Total	747

The number of Civil causes depending before the Sudder Dewanny Adawlut, on the 1st of April 1816, was 461;* and on the 1st instant 410;† being a reduction of 51 Civil suits. The actual number of appeals disposed of during the fifteen months amounts to 196‡. His Excellency in Council is already apprised, that Mr. Oswald did not join the Court until the 7th of August 1816; and that he was subsequently prevented from attending to business during a period of six weeks, in consequence of his having had the misfortune to break his arm. Mr. Ker was also prevented from attending the Court for a period of six weeks, in consequence of severe indisposition. No person has been yet appointed 2d Judge of the Court in the place of Mr. Fombelle, who embarked for England in the month of February last; and Mr. Stuart, the 3d Judge, is still absent for the recovery of his health at the Cape of Good Hope. These circumstances, combined with interruptions to the sittings of the Civil Court, from the occurrence of the two vacations, and of occasional Hindoo and Mahomedan holidays, have operated to prevent a greater reduction in the arrears of Civil cases. It may, at the same time, be observed, that there is little arrear now depending in that branch of the business of the Court which is ordinarily denominated " Miscellaneous." In the department of English correspondence, the current business has been conducted without accumulation under the arrangement

* Viz.

Regular Appeals,	378
Special Ditto,	64
Summary Ditto,	19
	461

† Regular, 311
Special, - - 83
Summary, - - 16
410

‡ Regular Appeals, 141
Special Ditto, 25
Summary Ditto, 30
196

ment adopted by the Court in their resolutions of the 18th March, 1816; and the most important business depending in the English Department, previously to the month of April 1816, has been since disposed of. On a general review of the foregoing circumstances, they appear to warrant the following inferences.

1st, That the arrangements described in the proceedings of the Court of Sudder Dewanny and Nizamut Adawlut, under date the 18th March, 1816, and adopted from the 1st of the following month, have, with the aid of a Fifth Judge, during part of the period since elapsed, been productive of essential advantage in the conduct of the business of the Court. 2dly, That if circumstances had admitted of the regular attendance of five Judges (as contemplated by Government in their resolutions of the 8th March, 1816,) the arrears of depending Civil causes would by this time have been materially reduced. And 3dly, That if the intention of Government be fully carried into effect, by the co-operation of five Judges, under the arrangements which have been adopted for the dispatch of business, it may be confidently expected that the arrears in every department of the Court will be nearly, if not altogether, disposed of by the close of the year 1818."

127. We have been induced to recapitulate the whole of the foregoing report, as affording the best means for determining upon the necessity or expediency of constituting a separate Court of Sudder Dewanny Adawlut, under the intimation given to us in Mr. Secretary Bayley's letter of the 4th July last, (paragraph 38,) that "it will be the anxious wish of Government to give full effect to the arrangements adopted by the Court on the 1st of April, 1816, by providing for the regular co-operation of five Judges for the dispatch of business." We trust that it will not be necessary to incur the expence of a separate Court for the determination of the arrear of Civil causes now depending, and as all the advantages which could be expected from a new constitution of the two superior Civil and Criminal Courts (by separating them, and appointing three Judges to each) appear to be essentially and practically derived from the established mode of conducting the business of both Courts, under five Judges, we do not feel ourselves warranted in recommending any expensive alteration.

128. We shall close this part of our report with a reference to the latest annual and half yearly statements which have been received, of the number of Causes depending before the Judges and Registers in the Zillah and City Courts and in the Provincial Courts; viz. those made up to the 1st January and 1st July, 1817: and submitted to Government on the 4th June, and the 13th and 27th December,

cember, 1817. The number depending before the Native Commissioners at the same period has been already noticed.*

129. From these statements it appears, that the number of Regular suits depending before the Zillah and City Judges and Registers, and before the Provincial Courts, on the 1st January and 1st July, 1817, was as follows.

1st. Lower Provinces.

	1st January.	1st July.
Zillah and City Judges,	9,699	7,331
Ditto Registers,	7,045	7,769
Provincial Courts,	2,978	2,653

2d. Upper Provinces.

	1st January.	1st July.
Zillah and City Judges,	2,668	2,606
Ditto Registers,	1,294	1,583
Provincial Courts,	603	614

130. It further appears that the following number of Regular suits was decided on trial, dismissed on default, or adjusted by razeenamehs, in the European Courts abovementioned, during the year 1816; and the first six months of 1817.

1st. Lower Provinces.

	Year 1816.	Six Months of 1817.
Zillah and City Judges,	5,059	3,003
Ditto Registers,	9,728	5,614
Provincial Courts,	672	729

2d. Upper Provinces.

Zillah and City Judges,	1,559	852
Ditto Registers,	2,338	1,380
Provincial Courts,	459	135

131. Assuming these Abstracts as the data for a general comparison (though it is not applicable to particular Courts, which are more or less in arrear,) the average periods of the arrears of business in the Courts of the Zillah and City Judges and Registers, and of the Provincial Courts, may be generally stated as follows.

1st.

* In Paragraphs 69 and 71.

1st. Zillah and City Judges.

In the Lower Provinces, fifteen Months; and in the Upper Provinces, eighteen Months.

2d. Ditto Registers.

In the Lower Provinces, eight Months; in the Upper Provinces, seven Months.

3d. Provincial Courts.

In the Lower Provinces, twenty-one Months; in the Upper Provinces, twenty-two Months.

132. A reference to the detailed statements which were submitted to Government on the 13th and 27th December last, will shew how far the above general average can be applied, or not, to particular Courts. We shall therefore only add, in this place, the following comparison of the total number of Civil suits depending on the 1st January 1817, with the number depending on the 1st January, 1813, as stated in the 3d paragraph of the Honorable Court's letter, dated the 9th November, 1814; which will shew the actual reduction that has since taken place, exclusive of a further diminution of 8,174, A. in the first six Months of 1817.

A. Sudder Dewanny Adawlut, ...	51
Provincial Courts, ...	314
Zillah and City Courts, ...	2,641
Courts of Moonsiffs, ...	5,168
	8,174

* Before Zillah and City Judges and Assistant Judges, ...	19,783
Ditto Registers, ...	8,963
Ditto Sudder Aumeens, ...	20,501
Mofussil Native Commissioners, ...	89,259
Provincial Courts, ...	3,636
Sudder Dewanny Adawlut, ...	264
	1,42,406

† Zillah and City Judges, ...	12,387
Ditto Registers, ...	8,339
Sudder Aumeens, ...	29,041
Moonsiffs, ...	38,730
Provincial Courts, ...	3,581
Sudder Dewanny Adawlut, ...	442
	92,520

Note. The increase of suits depending before the Sudder Aumeens may be ascribed partly to an enlargement of their powers to try suits for one hundred and fifty instead of one hundred Rupees; and partly to their having the trial of suits excluded from the cognizance of the Moonsiffs, by the first Clause of Section XIII. Regulation XXIII. 1814; as stated in the 11th and 12th paragraphs of the Register's letter, accompanying the Half yearly statements, made up to the 1st January 1817.

133. The aggregate arrear of Civil Causes on the 1st January 1813, as noticed by the Honorable Court, was 1,42,406.*

The total number of depending original suits and appeals on the 1st January, 1817, as detailed in the statements made up to that date was, ...	92,520†
Reduction in the five years,	49,886

134.

A. Zillah and City Judges and assistant Judges, ...	8,208
Registers, ...	7,585
Sudder Aumeens, ...	22,602
Moonsiffs, ...	1,36,200
Provincial Courts, ...	1,128
Sudder Dewanny Adawlut, ...	72
	1,75,795
B Zillah and City Judges and assistant Judges, ...	6,070
Registers, ...	7,855
Sudder Aumeens, ...	22,671
Moonsiffs, ...	1,27,471
Provincial Courts, ...	1,096
Sudder Dewanny Adawlut, ...	69
	1,65,210
C. Zillah and City Judges, ...	5,744
Registers, ...	8,953
Sudder Aumeens, ...	26,702
Moonsiffs, ...	93,947
Provincial Courts, ...	1,106
Sudder Dewanny Adawlut, ...	85
	1,36,537
D. Zillah and City Judges, ...	6,618
Registers, ...	12,066
Sudder Aumeens, ...	38,922
Moonsiffs, ...	72,055
Provincial Courts, ...	1,131
Sudder Dewanny Adawlut, ...	108
	1,30,900

Note. The stated diminution in the number of suits disposed of during the years 1815 and 1816, compared with 1813 and 1814, is chiefly ascribable to the abridged jurisdiction of the Moonsiffs under the provisions of Regulation XXIII, 1814, which were in force from the 1st February 1815.

134. The entire number of depending Causes must still appear formidable, if reference be not made to the annual number determined, or adjusted. But the statements of actual decisions, non-suits, and adjustments, in the years 1813, 1814, 1815, and 1816, which were submitted to Government on the 4th June last, shew that the total number disposed of in each of those years, was as follows.

In 1813	1,75,795.	A.
1814	1,65,210.	B.
1815	1,36,537.	C.
1816	1,30,900.	D.
Total	6,08,442	
Annual Average	1,52,110	

Police.

135. The very full communications made to Government, through the two Superintendants of the Police, on every matter connected with this Department, render it unnecessary for us to enter into any detail on this head of the Honorable Court's letter; especially on the first measure proposed;* vizt. the gradual establishment throughout the Country of an efficient Village Police.

136. In the concluding paragraph of a letter from his Excellency the Governor General in Council to the Honorable Court of Directors, dated the 28th February, 1816, (the latest of which a copy has been transmitted to us from the Judicial Department,) after a comprehensive report of the chokeedaree arrangements introduced under the provisions of Regulation III. 1814, at the several stations of the Magistrates, in the Provinces of Bengal, Behar, and Orissa; and under Regulation XVI. 1814, in the Divisions of Bareilly and Benares, with information of the preparatory

* See Paragraph 7.

preparatory steps taken for extending the experienced benefits of the subsidiary Police system, thus established, to the places where joint Magistrates are stationed; and to some of the most populous and opulent towns in each district; it was added "when an efficient subsidiary Police shall have been thus organized in the principal and most populous towns, it will be our next object to introduce a general system of village watch throughout the Country. We have already taken the necessary preliminary measures for obtaining the requisite information to aid our judgment regarding this highly important question. In determining the general principles on which such a system should be established, and in arranging its details, we shall proceed with due deliberation and circumspection. The rules which have been prescribed in Regulation XIII. 1813, cannot be rendered generally applicable to the villages and hamlets without many and important modifications; and it may probably be necessary and expedient, that instead of introducing one uniform system of Village Police throughout the whole country, the arrangements should be framed upon principles varying according to the local circumstances and peculiarities of different Provinces, or even of different districts."

137. Regulation XIII. 1813, as well as Regulations III. and XVI. 1814, have been since superseded by Regulation XXII. 1816, "for re-enacting and reducing into one Regulation, with amendments and further provisions, the rules in force, for the appointment and maintenance of chowkeedars of Police," the objects of which, and the benefits derived from the subsidiary Police establishments organized in the Lower Provinces, are noticed in the following terms, in a letter addressed to the Acting Superintendent of Police in those Provinces, by the Secretary to Government in the Judicial Department, under date the 23d May, 1817.

"The experience of the past year has furnished many striking proofs in addition to those already recorded, of the practical benefits derived from the Subsidiary Police establishments which have been organized in the cities and towns of the Lower Provinces under Regulation XIII. 1813, and other subsequent enactments. The defects which had been shewn to exist in some parts of the system established under those Regulations, have been corrected by Regulation XXII. 1816. The regular payment of the allowances of the chowkeedars has been better secured; the details of the system have been simplified; its operation has been extended to the towns at which joint Magistrates are stationed in the Lower Provinces, and means have been provided for bringing the actual state of these establishments under the annual observation of Government. In the mean time the inhabitants of various towns and villages, to which the system had not been extended by Law, have voluntarily organized and contributed to support establishments of watchmen on similar principles; and it is gratifying to observe that those arrangements have been attended with all the advantages which were reasonably to have been expected from them."

138

138. We have been induced to cite the above letter, as containing the latest authoritative information, which we possess, of the success attending the subsidiary Police system, already established in the cities and principal towns, under the Regulations adverted to; and of the measures adopted with a view to the introduction of a general system of village watch throughout the Country.

139. In finally determining the principles upon which an efficient establishment of village watchmen, such as is required for aiding the regular Police officers in maintaining the peace of the country, and in discovering and apprehending offenders, should be formed and maintained, due attention will, of course, be given to the sentiments and instructions of the Honorable Court of Directors; as far as the actual state of the country may admit. We shall therefore, without offering any decided opinion, to what extent it may be practicable and expedient to revive the old establishment of village watchmen, described in the 95th and following paragraphs of the Honorable Court's letter, and to provide for them by grants of chakeran land, or other customary modes of payment, (on which points the local information obtained by Government, through the Superintendents of the Police, will afford better grounds of judgment and decision than any we could offer,) submit only for the consideration of Government, the following extracts from some of the papers now before us, which appear to merit particular attention.

140. Mr. Fortescue, Officiating Judge of the Benares Provincial Court, in his Minute dated 20th February, 1816, (paragraph 12), observes: "I before gave my opinion as to village watchmen. Their maintenance should, I think, always be in money and not in land, as the former leaves them at liberty to perform their duty, and secures them at all times a certain livelihood: whereas the latter generally occupies most of their time in cultivating and watching, and may be withdrawn by a bad season. Moreover it would be difficult, perhaps impracticable, either to find new lands to give to them, or to trace back those of which they have been deprived. As the late Chokeedary Regulation (XIII. of 1813), which has been so successfully introduced into the sudder stations, will probably be extended, with local modifications, to the interior villages, the expediency of endeavouring to revive the old system of village watchmen to it's original extent, may be doubted. The new arrangement will, I presume, make some provision for these people; for without their aid, or such as they are qualified to afford, the Police must, I apprehend, be very deficient."

141. Mr. Wilberforce Bird, Judge and Magistrate of the City of Benares, in his letter of the 21st October, 1816, after noticing the neglect which took place, on our obtaining possession of the Country, "of those natural authorities which were established

established in every village," adds (paragraph 36): "After the lapse of so long a period of time it is an hopeless attempt to re-animate the neglected remains of these natural authorities; and restore to them their original vigour. The state of that country which cherished and supported them is radically changed, and they are not to be replanted by foreign hands; It will be found no easy matter, by any course of enquiry that may be set on foot, to discover the territorial allotments which were originally the support of the Village Police; and which the Landholders at various times, have surreptitiously resumed; and nothing remains, I apprehend, but to alter the principle upon which this establishment was formed, and substitute another, better adapted, at the present moment, to meet the object in view. Let all the lands originally allotted for the support of the Village Police, whether resumed or not, be relinquished to the Landholders; and a contribution in money be levied from them for the support of such number of watchmen, as cannot be maintained by the inhabitants of the villages situated in their respective estates, by the extension of the rules contained in the 13th Regulation of 1813. Unless the village watchmen are paid by the Magistrate, and rendered independent of the Landholders, the Police, which so materially depends upon their activity, can never be efficient."

142. Mr. Wauchope, Judge and Magistrate of Zillah Bundlecund, has offered the following remarks and suggestions in his letter, dated the 9th November, 1816, (paragraph 25 to 27.)

"That a due organization of the village watchmen, such as would secure their undivided services and ensure to them a fixed and competent provision, is essentially requisite to the efficiency and perfection of our system of Police, has long been a notorious truth, which is most fully corroborated by the circumstances of those watchmen in this district. It is understood to be the intention of Government to extend the Subsidiary Police arrangement of Regulation XIII. of 1813, which has been adopted, (and I believe with great success,) at the chief towns of districts, to all the interior villages of note. Having given effect to this arrangement, and having placed the village watchmen on a respectable and well regulated footing, I am of opinion that nearly all will have been done, that can be done with expediency and reasonable prospect of benefit, towards improving the already established system of Police. The subsistence of the village watchmen is at present irregular, precarious and insufficient. The majority have lands at low rents, and a few are paid in money; but neither of those sources are ever adequate to their bare subsistence. For that, they chiefly depend on perquisites, they still contrive to obtain of from grain sellers, public weighers, and other Bazar and Haut emoluments; but which being unauthorized by the Regulations, they continue to enjoy more by sufferance than by right. I would recommend

commend that all receipts of that nature be entirely relinquished ; and that their lands be resumed by the Zemindars, and that every village be compelled to maintain a fixed proportion of watchmen, at an allowance of 2 Rupees per mensem. The number to be regulated by the jumma of the village ; for example, one watchman might suffice for every village, under Rupees 500 ; two for all from Rupees 500 to Rupees 1000 ; three, for all from Rupees 1000 to Rupees 1500 ; four for all from Rupees 1500 to Rupees 3000; five for all from Rupees 3000 to Rupees 5,000; and above that, an additional watchman for every additional Rupees 2000 of Jumma; this proportion is small, but with their exclusive employment in Police duties, it would, I conceive, suffice. The pay may also be considered small, but it would be liberal, compared with their present means, some of which would still be left to them ; such as presents from travellers and traders, for watching their property on its transit through their village. A larger proportion of watchmen might be required from rent free villages, and into all villages, of which the extent and population are so disproportionate to the jumma, as to make this rule inapplicable, the Subsidiary Police, according to Regulation XIII. of 1813, should be introduced."

143. The following facts and observations are contained in a letter from Mr. H. Shakespear, late Judge and Magistrate of Zillah Rajshahye, dated the 25th January, 1816, (paragraph 77 to 91). " Under the head of Police, the subsidiary establishment of Pykes and Chowkeedars, appears to have particularly attracted the notice of the Honorable Court. Although, perhaps, not entertained by the Zemindars to the extent they were at the formation of the present system of Police in 1793, they are still universally employed in the Lower Provinces, especially the former, who constitute an indispensable part of the establishment of every description of Landholder. Rent cannot be collected without them ; nor Revenue conveyed ; nor the property of defaulting tenants distrained ; nor communications kept up between the Zemindar and his local Agents, without their assistance. Chowkeedars are also kept up in considerable numbers ; but more, I believe, by the inhabitants of the towns, and larger villages, who defray their salaries by monthly contributions, than by the Landholders themselves, who usually employ the Chowkeedars, if they appoint any, as Pykes in levying rent, and in the performance of the duties before mentioned. In the reports furnished by 1771 Landholders of this district, under the provisions of Regulation XII. 1807, for the year 1221 B. S. (1814-15) 9852 Pykes and Chowkeedars are stated to be employed by them in 10,151 villages, receiving 59,039 Rupees 8 annas, per annum, in money, and 53,574 Beegahs 15 Cottahs of land, which on a rough calculation, would give one half of them about 1 Rupee per month; and the other half 11 beegahs of land each, for their maintenance.— There can however be no doubt that these returns are very imperfectly rendered : I ascertained last year, as well as I was able, without taking a regular census, that

that the population of this district amounted to upwards of 2 millions of adults, and judging from that circumstance, and from my knowledge of the large number of Chowkeedars kept up by the merchants and other inhabitants of towns, and populous villages, I should be inclined to reckon the total number of Pykes and Chowkeedars at twice that number. If the liberal plan directed by the 135th paragraph of the Honorable Court's letter is duly carried into effect, and enforced, this large body will be placed on a respectable and serviceable footing; and the state of the internal Police most materially improved; whilst the objection to all the rules which have hitherto been enacted, with a view to obtain its aid and assistance, will be obviated by bringing the members of it under the immediate control of the Magistrate. We must not, however, by attempting to do too much, run the risk of losing the benefits which we already derive from the Pykallee establishment at present kept up by the Zemindars; and I would therefore suggest that the attention of the officers of Government should in the first instance be given to the re-establishment of the Chowkeedars in all villages containing more than 100 inhabitants: when the primary object of their maintenance shall have been settled, on the principles suggested by the Honorable Court; the names of the persons appointed to the office, the amount in lands or money which they received, would be registered at the Police Thannahs, and Copies of the registers kept in the Magistrate's office. The Munduls of villages should be held responsible for watching the conduct of the Chowkeedars, and reporting any neglect on their part; and also for preventing the Landholders from undue attempts to deprive them of their allotted provision. They should not be liable to dismission, unless on proof of neglect or misconduct, by order of the Magistrate, and a summary process should be allowed them, to resist the attempts of the Landholders, or others, from depriving them of their appointed maintenance. The objections which have been urged against supporting Chowkeedars by grants of land, on the ground that their attention may be diverted from the object of their employment, by the necessity of their labouring in the cultivation of those lands, are not unworthy of consideration. Nothing can be better adapted to the state of this country than the rules now in force for ensuring prompt and punctual information by the Landholders, and their agents, of all crimes committed within the limits of their estates. The responsibility which attaches to them on this head will, I think, be weakened, if the Pykes are taught to feel a separate interest from the Zemindars, and to consider themselves as Officers of Police. If the local Magistracy were able to hold such an active and vigilant control over the Zemindars and their agents, and the Pykes and the Chowkeedars, as to ensure early intelligence to the Police Darogahs of all crimes, and an effectual guard over the property of the villagers at night time, little would be wanting towards the efficiency of the Police."

144.

144. We shall conclude these extracts, on the subject of Village watchmen, with the following from Mr. J. B. Elliott's observations on the Police, dated 11th April, 1816, with particular reference to the "Pasbans, Chowkeedars, and Dosads," of Zillah Sarun.

"I come lastly to consider the situation of this class of men, together with the means by which they may be rendered more extensively useful as subordinate agents of Police. It is useless to attempt to retrace the origin of remote and decayed institutions, further than may be necessary to obtain information sufficient to render them as useful as may be compatible with the existing order of things. The Village watchmen, neither much countenanced, nor altogether proscribed, seem to have been left to shift for themselves, for some time after the conclusion of the perpetual settlement. In many districts they changed their character, and had recourse to husbandry, labor, or decoity, for a livelihood, while in others they were retained as a useful class of servants by the Zemindars. Their situation and employments in this district are at present as follow. The Zemindars of every Village of any note in this district maintain one or more Pasbans, who are sometimes paid by a Jageer in land, of from about 1 to 3 Beegas; or by a money stipend, averaging from 1 to 5 Rupees per annum. Some receive both land and money. It is also usual for them to receive certain small gratuities from the Royots and principal inhabitants at the harvests or other stated periods. All the abovementioned particulars are registered at the Thannah, and an annual report, noticing changes and other matters, is transmitted to the Magistrate. Their duties are to watch at night; to apprehend robbers and other offenders; to procure provisions for Troops, or Europeans travelling; to carry Thannah reports, to escort offenders, and to give intelligence on these and a variety of other subjects, connected with the Police, to the Thannah, and through the Thannadar to the Magistrate. I have forbidden their being employed in conveying the treasure of the Zemindars, or performing other duties connected with the collection of the Revenue. The Zemindars keep private servants of the same cast (Dosad) to perform these services. I do not conceive that any lands formerly allowed for their subsistence were resumed by the Government in this district: and at all events, as the Zemindars can well afford to maintain them, and consider it their duty to do so, I don't see any thing to be gained by instituting further inquiry into the matter. I have also to add, that I should consider the giving the Zemindars any greater powers over them than what they naturally possess, as being the persons who appoint and pay them, would be attended with prejudicial consequences to the Police. But the measure which strikes me as the best calculated to produce beneficial effects to the general police of the Country, is the extension of the provisions of Regulation XIII. 1813, to all the principal Towns, Hauths and Gunges. The institution of Village watchmen (Pasbans)

bans) does not I believe, exist in such perfection in some districts as I have described it to do in this. In such districts the establishment of the Chowkeedary system seems to be peremptorily called for. In the event of the Chowkeedary system being introduced into districts where the institution of Village watchmen (Pasbans) exists, it will be expedient, in my opinion, still to maintain the latter establishment with some slight modification of its duties; as for instance, the Pasbans, instead of watching by night in the Village, may be usefully employed in patrolling the out skirts and more remote tolahs (hamlets;) in escorting travellers and other duties of a more miscellaneous nature. To conclude, I beg to express my decided opinion that the continuance of the present Thannadary system of Police, modified and rendered more efficient by giving to the Magistrates full powers of appointing, fining, and removing those officers, together with a judicious extension of the Chowkeedary system to all the principal Villages, Hauts, and Gunges, will, with such moderate alterations as experience may from time to time suggest, tend more effectually to promote the peace and happiness of our Native subjects, and with less hazard of inconvenience, than is to be expected from any general dislocation of the present system, and transfer of the Police to the Collectors and Zemeendars."

145. The conclusion of the above Extract leads to the consideration of what may be deemed the most important change of system contemplated by the Honorable Court of Directors; namely, a transfer of the European superintendence of the Police, in the several Zillahs, from the present Magistrates to the Collectors.

146. The arrangements which have been noticed, under the head of Civil Justice, do not involve any essential alteration in the constitution of the European Courts of Civil Judicature, as established in 1793, and still maintained. The summary process, in certain cases, proposed to be entrusted to the Collectors, being subsidiary to a regular suit in the Civil Courts, can be scarcely deemed an exception, of practical consequence, though the Honorable Court have justly stated it to be "at variance with the declared principle of the existing Judicial system; which provides for the complete separation of the Revenue and Judicial authorities." Nor would the suggested organization of Village Courts, and those of Native Commissioners, for the trial of Civil suits, not exceeding a certain amount or value, if found practicable and expedient, occasion any deviation from the principles of the general system of internal administration, which, founded by Marquis Cornwallis, and modified or extended by successive Governments, has now existed in these Provinces during a period of nearly twenty-five years.

147. But a transfer of the charge and administration of the Police to the Collector, with authority to decide on crimes such as are at present entrusted to the Zillah Judge

Judge in his capacity of Magistrate, (as proposed in the 167th paragraph of the letter from the Honorable Court of Directors, dated 9th November 1814) appears to involve a radical change in the division of authorities established by the system of 1793. By that system, the superintendence of the Police, and the administration of Justice, Civil and Criminal, were altogether separated from the office of Collector of the public Revenue, to which they had previously been annexed under the Regulations of 1787. The Police was placed under the distinct charge of a Zillah or City Magistrate; who was also empowered to try Criminal offences, within a limited extent of punishment; and in those of a more heinous nature, it was made his duty to commit for trial before the Court of Circuit. The person holding the office of Magistrate was at the same time, in his capacity of Judge, invested with the superintendence of the Zillah, or City Civil Court.

148. In adopting this fundamental arrangement, it is evident, from the preamble to Regulation II. 1793, from the provisions of several of the Regulations passed on the 1st May of that year, and from the minutes of Lord Cornwallis, recorded on the occasion, that this enlightened Legislator for British India, attached great importance to the principle of divesting the Revenue Officers of all Judicial powers, at the same time that he judged it necessary to arm them with ample powers to enforce the demands of Government, under a personal responsibility and subjection of the local Courts of Judicature, for any wilful infringement of the rules prescribed for their guidance. It must however be admitted, as stated by the Honorable Court of Directors,* that "the great objects which Lord Cornwallis had in view, "in forming the Judicial Code of Bengal, consisted, not only in the desire of pro-"viding for an upright administration of Justice, but also in that of securing a "promptitude and facility in the means of obtaining it." Whilst therefore, on the one hand, we consider it to be obviously inexpedient that any material innovation should take place, in the established Judicial system, so long as it is found to answer the purpose intended by it, or can be made to accomplish them by any practicable and consistent additional means of execution, we should not feel ourselves justified in objecting upon abstract and theoretic grounds, unsupported by actual experience, to a new division of powers and duties amongst the European Public Officers employed in the Revenue and Judicial Departments, if, on due consideration it should appear indispensably necessary, for the important object of securing a prompt administration of Justice, or as connected with that object, the maintenance of an efficient local Police.

149. With this declaration of our sentiments, on the general question of innovation, as applicable to the proposed transfer of authority from the present Magistrates

* Par. 2 of letter, dated 9th November, 1814.

gistrates to the Collectors, we shall proceed to consider the particular reasons on which the proposition is founded. These are detailed in the letter of the Honorable Court of Directors to the Government of Fort St. George, dated 29th April, 1814, * but are re-capitulated in the 135th paragraph of their Bengal General letter, under date the 9th November 1814, which, after referring to the reasons stated in the Judicial dispatch to Fort St. George, respecting a transfer of the Police to the Collectors, adds, "From what we have there stated on this subject, you will perceive, that we enforced the fitness and expediency of a recurrence to that principle, from this consideration; that it is, with reference to the Native Institutions of the Country, the most favourable to the bringing into efficient service its municipal Police. We must add, that independent of this most important and essential consideration, the Collector must, under any circumstances, be far better qualified to superintend the Police than a Civil or Criminal Judge can ever be, who is necessarily confined to one spot, engaged in a sedentary occupation, which does not admit of his moving about the Country, or of that intercourse with the people so essential to the due discharge of the duties of a Magistrate, and to the efficient supervision and control of those employed under his authority, in the fulfilment of those duties."

150. The policy of investing the Collectors with the superintendence of the Police, and of empowering them, in that capacity, to take judicial cognizance of the Criminal offences now cognizable by the Zillah Magistrates, is further enforced in the 167th paragraph of the General letter above mentioned, as furnishing the most effectual means of remedying the serious delay now experienced, in many instances, in the administration of Criminal Justice.

151. Before we offer our own sentiments on the sufficiency of these reasons for the arrangement grounded upon them, we beg leave to state the opinions of some of the local Judicial Officers who have been consulted on the subject; and whose character and local knowledge give weight to their observations.

152. The first and fourth Judges of the Bareilly Provincial Court; in their respective Minutes of the 2d December, and 8th February, 1816, have objected to the proposed arrangement; partly on a general principle, that the Revenue Public Officers being often parties in the Civil Courts, should not be invested with Judicial powers; but chiefly on the ground of the very heavy duty which the Collectors now have to perform in the Upper Provinces. On this point Mr. Hawkins observes, "I am sure that in these Provinces, where the Collectors of the land revenue have already.

* Para. 88 and sequel.

already their time so entirely occupied with the business of the Revenue Department, it would altogether be impracticable for them to superintend the Police; much less could they be supposed capable of discharging the very arduous duties of Magistrate." And Mr. Elliott, who formerly held the situation of Collector in those Provinces, says, "From my own experience, I can assert, that 12 hours per diem was barely sufficient for the performance of the duty of a Collector, and not unfrequently 16 hours of the 24 have been passed in my kuchuhree."

153. Mr. Fortescue, Officiating Judge of the Benares Provincial Court, in his Minute dated the 20th February 1816, remarks as follows. "As the question proposed by the Honorable Court, of transferring the duties of Magistrate to the Collector, seems to me to rest chiefly on the advantage of the subordinate organization under his authority of the village watchmen, the proprietor and the Tehseeldars, &c. and as this system has now been so long and so completely disordered, I apprehend it will be better to try the effects of the measures now successfully in progress for the formation of a Village Police, on the basis of Regulation XIII 1813, which may ultimately admit of a reduction in the heavy establishments now supported by Government; than to encounter the difficulties and expense of re-organizing the remnant of the old Native Police. Besides, believing that the principles of Regulation XIII. 1813, are well calculated for the foundation of a strong Police, and therefore that the strict gradation of controul through the Revenue Officers, as noticed by the Honorable Court, is not so indispensable for the plan on trial, I am of opinion that other duties can be made over to the Collector, which, while they will afford great relief to the Judge and Magistrate, shall at the same time assimilate more readily with the routine of his official functions, than those of a Magistrate could do."

154. The Patna Court of Circuit, in their letter of the 15th October 1816, (paragraph 10) have concisely stated their opinion that the administration of the Police should not be taken out of the hands of the Magistrate and vested in the Collector, as the former must be generally supposed better qualified for the duty. This sentiment is also more fully expressed by the Senior Judge of the Calcutta Provincial Court, in the following Extract from his Minute dated the 20th of March 1817. "On the question of the expediency of transferring the charge of Police from the Zillah Judges to the Collectors, and the greater fitness of the latter to superintend it with vigor and energy, I must humbly beg leave to dissent from the opinion of our Honorable employers. The reasons assigned by them for such a measure, though very specious, would not, I fear, be found to answer in practice. The duties the Collectors have to perform even now, if properly attended to, are full as much as they can execute. The various duties of collecting the land Revenue, the abkarree collections, the

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stampt paper sales, and the adjustment of Revenue suits referred to them, &c. are already found to be more than they can execute with the necessary dispatch, particularly the adjustment of Revenue suits; and this must continue to be the case so long as regular engagements between the Ryots, under-tenants and Landholders, are not insisted upon as indispensable. The present Collectors, I imagine, would not be found, from their hitherto confined pursuits, in one line only of the service, well qualified for such additional duty; some of them having chosen the Revenue line from a delicacy of constitution, which they thought rendered them unequal to the laborious duties of the Judicial line; others also have chosen the Revenue line, from a diffidence of their own abilities being adequate to any other duty; and some few, from a supposition that there is less labor in the Revenue, than in the Judicial line."

155. The Magistrate of Bundlecund, in his letter, dated 9th November, 1816, (paragraph 34) has stated the following objections to the transfer of the office of Magistrate to the Collector.

"*1st.* It would tend to excite distrust in the people, by giving a character of instability to our system of Legislature. Its advantages are at least problematical, and before so material an innovation should be attempted, they should be certain, great, and demonstrable. The inconveniences of existing systems are always obvious, and may be easily exposed. The disadvantages of any system are never demonstrable but from experience.

"*2dly.* By the proposed revival of the Mal Adawlut in the hands of the Collectors, with other Judicial duties, that may appropriately be consigned to them, those Officers would, I imagine, have enough to occupy all the time they could spare from their Revenue duties. If there be any Collectors, as I understand there are in the Lower Provinces, whose offices are almost sinecures, owing to the facility with which the Revenue is collected, and to whom the above observation cannot consequently apply, I would recommend that their offices be blended with adjacent Collectorships; and that both the salary and officer be transposed to the Judicial line of the service, to fill the new appointments which the proposed diminution of the larger districts would create. The duties of the Police would be liable to be sacrificed for the more primary one, in the Collector's eyes, of realizing balances of Revenue; and the powers of the Magistrate, it may be feared, would be perverted, (at least by the Native establishment,) to aid the execution of Revenue processes, to the prejudice of that judiciously qualified authority with which Collectors are now vested."

156. The Magistrate of the City of Benares, in his letter of the 25th October,

1816, (paragraph 44) makes the following remarks on the proposed transfer of duties to the Collector. "I see no advantage likely to result either to the Government or the Public, from such a transfer, especially if the agency of the Landholders is to be employed, as proposed by the Honorable Court, in the business of Police. The Landholders consider the Collector as their natural enemy; part of his business consists in advertising their estates for sale: and in ridding them of that which it is the main object of all their efforts to preserve. They know that their only protection is the Civil Courts; and with the Officers who preside in those Courts, not with the Collectors, will it ever be possible to bring them to consider their interests identified. For these reasons alone, the offices of Judge and Magistrate should, in my opinion, continue to be united. Were the wishes of the people to be consulted, there is no doubt that the principle of preserving the Revenue and Judicial authorities distinct, would remain unimpaired: a principle, which, whatever may be inferred from the Minutes of Lord Cornwallis, was, after all, the main spring of the system introduced by that Nobleman. Another consideration also should not be overlooked. There are several districts in which Collectors at present do not reside; and it would be necessary therefore to make an encrease in the number of those Officers."

157. A more detailed statement of objections to the proposed transfer, both on general principles, and with reference to local circumstances, and experience, is set forth, under the head of "Collectors" in Mr. J. B. Elliott's observations on Police, already adverted to.* But it is too long for insertion in this place: and we shall therefore only cite his concluding opinion, "that the proposed arrangement, so far from promising greater expedition in the dispatch of business; greater security to the subject; greater credit to the Government; or greater ease and satisfaction to the Officers of both Departments; would be attended with effects diametrically opposite."

158. Having thus stated the principal reasons and opinions contained in the reports before us, against vesting the Collectors with the charge of the Police, and the functions of the present Magistrates, it is necessary to add that some of the Judicial Officers (though not many) have expressed sentiments in favor of the measure.

159. Mr. W. T. Smith, late Second, and now First Judge of the Moorshedabad Provincial Court, in his letter dated the 13th March, 1817,† observes "That the transfer of the Magisterial authority to the Collector, affords the most lively prospect of a permanent and speedy administration of justice; and of the readiest means of disburdening the Judicial tribunals of the heavy arrears and accumulation

* Dated 11th April, 1816.
† Par. 4 under the head of Police.

tion of Civil suits, which appear almost to bid defiance to every other expedient; no Gentleman will, I think, deny, that has given the question mature deliberation." In a subsequent paragraph, however, Mr. Smith states some objections which had occurred to him against uniting the offices of Magistrate and Collector, though he did not consider them of moment, when contrasted with the advantages expected from the measure; and he describes, in forcible language, the extortion and cruelty of the Native Officers, who were invested with joint powers, for purposes of Police and Revenue, in the district of Allahabad, during the years 1804, 1805, and 1806, when he himself was Judge and Magistrate of that District; explaining the opposite information given on this subject in an Official Report quoted by the Honorable Court of Directors,* by "subsequent discoveries; that the Tehseeldars, who were the only offenders and the terror as well as the scourge of the district, allowed their just fears to predominate over their duty, by the suppression of the very crimes they had themselves committed."—Mr. Smith concludes his letter by observing, "that the Police of this Country, like all other systems, is certainly not free from defect; but the diminution of Decoity and crimes of magnitude, bear the strongest evidence to its progressive improvement; and the zeal and attention of the superior and subordinate Courts, and the executive Officers of Government, to its effective operation, afford every prospect of its arriving at a greater degree of improvement."

160. Mr. J. Ahmuty, late Officiating, and now Second Judge of the same Provincial Court, in his letter dated the 14th October 1816, (paragraph 5 to 8,) remarks as follows. "I am not aware of any serious or insuperable objections to the plan of the Honorable Court, for separating the two offices of Judge and Magistrate; and investing the Collector with the powers of a Magistrate, under certain modifications; as it must be obvious that by the union of the two authorities the Magistrate will be better enabled with such accession of strength, to exercise a most active and vigilant controul over the whole population of the Country; and to direct the internal energies of the district to the amelioration of the Police, and the general protection of the people; whilst the Judges, confined to the exclusive duties of the Civil Courts, and divested of all other avocations, would be able strenuously to devote their time and attention entirely to the administration of Civil Justice.—In this arrangement, all Officers, European or Native, attached to the Criminal and Revenue Departments, should be united under the Magistrate and Collector of the District; and all those dependent on the Civil Court, be placed as heretofore, under the authority of the Judge of the Zillah.—It will however be expedient to appoint an Assistant Collector under the Magistrate, to assist in the Official detail of that Department; and to prevent the attention of the former being unnecessarily diverted from his more important duties in

* In Par. 111th of their general letter, dated 9th November, 1814.

in the Criminal Department.—It has been, I believe, already acknowledged, that, in spite of every expedient adopted within these few years, to expedite the decision of Civil suits, and reduce the file, no adequate success has resulted; nor will it be reasonably expected, when the various, and important duties of the Magistrates are taken into due and unbiassed consideration.—The reading of, and passing orders on, the voluminous Police Reports alone, in a well-regulated district, will occupy, at least, two hours of the Magistrates time daily, and if the Thannadars be active and vigilant, the Magistrates will seldom be able to attend the Dewanny Court more than two days in the week for the trial of Civil suits; and even then the miscellaneous cases must in some degree be neglected; and thus an accumulation of Civil Suits of every description, under the present system, cannot possibly be averted.—In fact, the Judge and Magistrate of a District may be considered, with regard to the numerous, and laborious duties of his double office, as placed between Scylla and Charybdis; and so long as delays occur in the administration of Civil Justice, suits of every description must unavoidably accumulate; and there appears at length no remedy to check the evil, but a separation of the two offices of Judge and Magistrate, as suggested."

161. The late Judge and Magistrate of Momensing (Mr. Ewer*) has offered a qualified opinion in the following terms.—"The Collector has certainly, in most Zillahs, more leisure than the Judge; and the nature of his office enables him to move about the Country without inconvenience to the Public; whilst, on the contrary, the absence of the Judge, by putting a stop to the proceedings of the Civil Court, is in the highest degree injurious to the interests of all those who have business pending before it.—But this is the sole consideration which induces me to approve of the transfer of the Police: in every other point, the Judge is obviously fitter to be the Magistrate than the Collector can possibly be."

162. The late Judge and Magistrate of Rajshahye, (Mr. H. Shakespear,) whose letter, dated the 25th January, 1816, is the last we have to cite on this question, has expressed his sentiments more decidedly, though briefly, in the following Extract. —"It will be a necessary concomitant of any innovations in the present system, by which a greater quantity of business may be got through in the inferior Courts, that the hands of the Judges should be still further relieved than they would be by bringing into action all the means provided by Regulation XXIV. 1814, for lessening the number of suits on the Judge's file.—This object would certainly be attained, in the most unexceptionable manner, by entrusting the charge of the Police to the Collectors: who, possessing far more leisure than the Judges, would be able to appropriate four

* In his letter of the 20th September, 1816.

four days in the week to the duties of the Magistracy; and judging from my own experience, I do not think that they can be performed with less application."

163. We shall now proceed to state our own sentiments on the question under consideration.

164. It cannot be denied that, in many of the Zillahs and Cities, the present Judges and Magistrates have more extensive duties than they can personally perform, or can be duly executed with all the assistance now afforded them.—Consequently, any arrangement, free of material objection, that would relieve them from a part of those duties, would be so far advantageous to the Public service.

165. It must further be admitted, that, for the reasons stated by the Honorable Court of Directors, a Collector is better qualified, in some respects, to superintend the Police, than a Judge and Magistrate, whose Judicial duties necessarily confine his residence, in a great degree, to the station where his Court is held. If therefore it had appeared practicable, that the Collectors generally should undertake an efficient superintendence and control of the Native Police Officers, with the execution of the whole of the duties of the present Magistrates, immediately connected with the Police, we should have hesitated in offering any objection to such an arrangement, on the grounds adverted to in the 148th paragraph of this Report.—But on a full consideration of the subject, with the papers before us, we are compelled to state the following objections to the measure proposed.

166. In the first place it appears impossible that the Collectors of the extensive Districts in the Ceded and Conquered Provinces, whose time is already entirely occupied by their present duties, and must continue to be so till the formation of a permanent settlement of the land Revenue, should undertake the additional functions of Magistrate, and Superintendent of Police. *Secondly.* The same objection is applicable to the province of Benares; where there is only one Collector for the whole province, including the jurisdictions of three Magistrates, and a joint Magistrate stationed at Ghazeepore. *Thirdly.* It may likewise be applied to several Collectorships in the Lower Provinces, which include the jurisdictions of two or more Magistrates and joint Magistrates.* *Fourthly.* It may be questioned whether any of the Collectors in the Lower Provinces could perform the whole of the additional duties proposed to be transferred to them, without neglecting in some degree their present trusts; which extend to various other duties besides the collection of the land Revenue; and in the due discharge of which the Public interests, as well as those of individuals, are materially concerned. *Fifthly.* So large an addition of duty, and responsibility, to

* Burdwan, Dacca, Dinagepore, Moorshedabad Mymensing, Rungpore, 24 Pergunnahs, Bhaugulpore, Cuttack.

to the office of a Collector, could not be consistently made without a proportionate increase of salary; which, with the necessity of some additional Collectors, must occasion a considerable annual expence. *Sixthly.* Many of the present Collectors not having been employed in the Judicial Department, it cannot be expected that the whole of them should be so competent, as the present Magistrates, to maintain a vigorous Police, and administer justice in criminal cases. *Seventhly.* The division of authorities, under the existing system of internal administration, having a tendency to raise the weight and influence of the Judge and Magistrate, above those of the Collector, it may be presumed that, as asserted by some of the Judicial Officers, the Zillah and City Judges and Magistrates now possess more official power to obtain the co-operation of the Landholders, and other inhabitants of their respective jurisdictions, in promoting the objects of a good Police, than would be possessed by the Collectors, if invested with the charge of that Department. *Eighthly.* If the Collectors were required to perform the whole of the duties of the present Magistrates, they would be seldom able to leave their fixed stations; and in this case one of the principal advantages, expected from the proposed transfer, would be lost; whilst at the same time they might be often prevented, by their judicial duties, from making local enquiries called for by their proper functions in the Revenue Department. *Ninthly.* If to avoid this inconvenience, or with any other view, the Police only were placed under the Collectors, leaving the judicial duties of the Magistrate as they now are, it might be apprehended that, on the one hand, the Collector would want authority to maintain an effectual control over the Native officers of Police, and over those who are required to assist them in preventing the commission of Criminal offences, as well as in discovering and apprehending offenders; whilst on the other hand, the Magistrates, if deprived of their present authority over the Police Officers, would be impeded in following up the traces to guilt, which are often imperfectly indicated by the original enquiry of a Police Officer: and might also experience many other obstacles to the prompt administration of Criminal justice; which is now essentially promoted by the facilities of local enquiry, service of process, and numerous other subsidiary means, arising out of the immediate subordination of the Police Officers to the Zillah and City Magistrates. *Tenthly.* In the Regulation enacted at Fort St. George, "for the establishment of a general system of Police;*" under the instructions of the Hon'ble Court of Directors, it has been judged necessary to provide † that "no order shall be issued to any Police officer excepting by the Magistrate of the Zillah, (viz. the Collector acting in that capacity,) or his Assistants. But we apprehend that a similar provision at this Presidency would operate to a serious hindrance of Criminal Justice; unless the Collectors, as Magistrates, could be supposed to make so full an investigation of all Criminal cases brought before them, as to preclude the necessity of further evidence, or the issue of

* Regulation XI. 1816.
† Section LV.

of any further orders to the Police Officers, in trials before the Judge of the local Criminal Court. At the same time, it must be acknowledged that there would be great risk of collision, and consequent detriment to the Public Service, if the Police Officers were made subordinate to two independent authorities, viz. the Collector in his capacity of Magistrate, and a distinct Judge of the Zillah Criminal Court.—*Eleventhly.* The objection last mentioned is applicable, though in a less degree, to the necessary subordination of the Collector, as Magistrate, to the Superior Criminal Courts; whilst in his principal capacity he must continue subject to the control of the superior authorities in the Revenue Department.—*Twelfthly.* Without supposing that the Collectors would personally abuse the powers of Magistrate in charge of the Police, it may be reasonably doubted whether the Tehsildars and other Native Officers acting under them, whom it is proposed to employ in the Police, would not sometimes pervert the authority vested in them for Public purposes, to the means of promoting a private end; or at least to facilitate the collection of rents and revenues by other modes of coercion than those authorized in the Regulations.

167. On a general consideration of the foregoing objections, with the success which has attended the present administration of the Police for some years past; the evident improvement to which it has already attained in the suppression of heinous crimes, especially that of Gang-robbery; the probability that it will speedily become still more adequate to the accomplishment of every beneficial purpose which could be expected from a change in the European superintendence; the uncertainty whether the change suggested might not, under actual circumstances, prove injurious, rather than advantageous, to the Public interests; and the obvious policy of maintaining a system long established and familiarized to the people affected by it, with such aids and amendments as experience may suggest, until the utility and necessity of so material an alteration, as that proposed, shall be clearly demonstrated; we must declare it to be our deliberate opinion, that it would not, at present, be expedient to transfer the charge of the Police, and execution of the duties of Magistrate, to the Collector, in any part of the Territory under this Presidency; but more especially in the Divisions of Bareilly and Benares.

168. We should rather recommend, as a measure more efficacious for the object intended, and not likely to be attended with more, if so much, increase of expense, that in districts where the combined duties of Judge and Magistrate may be found, by experience, to be more extensive than can be duly performed by one person, with the usual aid of an additional Register in the Civil Court, and a Joint or Assistant Magistrate in the Criminal Department; (and it may not be deemed proper to constitute an additional Zillah;) the Offices of Zillah Judge and Zillah Magistrate be committed to different persons, either temporarily, or permanently, as circumstances may

may require. An arrangement of this nature now exists in Zillah Burdwan, under the orders of Government, communicated in Mr. Secretary Bayley's letter of the 14th October last; and it is expressly provided for by the second Clause of Section II. Regulation XVI. 1810.

169. Without entering upon a full discussion of the general question, whether, if any new division of European authorities in the Zillahs and Cities be required, a separation of the offices of Judge and Magistrate, without uniting either to that of Collector, would not be the most useful and expedient; we shall here notice only the following advantages, as evidently connected with such an arrangement.

First. The Magistrate, and the Civil Judge respectively, having no other duties to call for their time and attention, excepting those of their proper Department, the functions of each would naturally be discharged with much greater promptitude and regularity, than can be expected, when daily and exigent duties press equally for their exclusive occupation in two distinct branches of the Public service. *Secondly.* The Judges and Registers of the Civil Courts, having no other duty to perform, might be expected to keep up the business of those Courts, without arrear; to maintain an efficient control over the Sudder Ameens and Moonsiffs acting under them; and to examine personally witnesses whose testimony is required either by themselves, or by the Superior Courts; instead of employing native Agency for that purpose, as now unavoidably permitted by the Regulations. *Thirdly.* The Magistrates and their Assistants, being disengaged from the business of the Civil Courts, and being consequently able to devote the whole of their time to the duties of Police and Criminal Justice, the most important benefits in each of these Departments, might be expected to result. The Magistrate might occasionally visit the Police Thannahs within his Jurisdiction, or depute his Assistant for that purpose. He would also be at liberty to give much of his time to the reports of his Police Officers; and to an active superintendence and direction of the Police in all its details; which could not fail of proving highly beneficial. He would, at the same time, with the aid of his Assistant, be able to investigate Criminal charges of magnitude, as well as those of an inferior degree, to a much greater extent than he can at present, occupied as he is, during a large portion of every week, with the business of the Civil Court. A more speedy and satisfactory administration of justice, in all cases within the cognizance of the Magistrate, would not be the only good consequence. He would further be able to try deliberately, and might be entrusted to determine, with or without the assistance of his Law Officer, many charges which are now left to the trial and decision of the Courts of Circuit. But this point will be more

properly

properly considered in a subsequent part of our Report, under the head of *Criminal Justice.*

170. On the third and fourth propositions under the head of Police,* it appears sufficient to remark, that although on the supposition of the Police being placed under charge of the Collectors, it would be natural to use the agency of the Tehseeldars in that Department, as far as practicable; yet we should consider it indispensably necessary to continue also the existing Thannah establishments under Police Darogahs. The defects of a Tehseeldaree Police establishment, especially in the want of compact local jurisdictions, which are essential to a good Police, are detailed in the Preamble to Regulation XIV. 1807; and were also fully stated in letters from the Court of Nizamut Adawlut to Government, dated 23d May, 1807, and 1st June, 1808; relative to the system of Police, formerly established in the Divisions of Bareilly and Benares. We shall only add, that the numerous duties now required to be performed by the Police Officers, in co-operation with the Landholders and Farmers of land, or their local managers, and with the aid of the Munduls and other heads of villages, and the village watchmen, as prescribed in the several rules and provisions of Regulation XX. 1817,† could not, in our judgment be performed regularly and satisfactorily, without a permanent establishment of Native Officers employed immediately under the European Superintendents of Police, and stationed at convenient distances, with defined local jurisdictions, throughout the country.

171. It is unnecessary in this place to discuss the general character and conduct of the present Darogahs of the Police. They are sufficiently described in the Police Report referred to in the 138th paragraph of the letter from the Hon'ble Court of Directors; and occasional abuses must be expected in an office exposed to much temptation and some expense; the authorized allowance for which does not exceed twenty five or thirty Rupees per mensem.‡—But it is justly observed by the Honorable Court, that "much unquestionably depends upon the vigilance with which the conduct of the Darogahs is looked after; and the vigour and energy with which it is directed and

* See para. 7.

† Passed on the 7th October 1817, and entitled "A Regulation for reducing into one Regulation, with amendments and modifications, the several rules which have been passed for the guidance of Darogahs and other subordinate officers of Police; for modifying the existing rules concerning the resistance or evasion of Criminal process, and for requiring further aid to the Police in certain cases from the proprietors and farmers of land, and their local managers; as well as from the Munduls and other heads of villages."

‡ See on this subject paragraph 105 of letter from Mr. H. Shakespear, late Magistrate of Rajshahye, dated 25th January, 1810; in which he strongly recommends that in point of Salary, the Darogahs may be placed on a more respectable footing, on the following grounds: "They are expected to be men of respectable character and education; and it is necessary to the efficiency of their authority that they should keep up a certain appearance amongst the community whom they are deputed to rule over. It is also expected that they should keep a Horse or Palanquin, to enable them to prosecute their duty with dispatch; all of which it is impossible they can do on the limited Salary of twenty five or thirty Rupees per month; and the consequence is that they must resort to undue means of supporting their expences."

and controlled. The good effects which have resulted from the exertions that have within the last few years been made for that purpose, in many districts, are amply testified by the reports of the Judges of Circuit and Superintendents of the Police." It may be added, that an extension of the good effects, here noticed, is to be expected from the additional powers of control over the Police Officers, which have been vested in the Magistrates and Superintendents of Police by Regulation XVII. 1816.

172. On the policy of again employing the Zemindars, either exclusively or principally, in the management of the Police within the limits of their respective estates,* the local judicial Officers, who have been consulted, appear to agree in opinion, that it would not be safe or expedient. The Court of Directors indeed have not directed this measure generally, but express their sentiments in the following terms.† "In the Zemindarries which are frequently changing hands, or which, by the operation of sales, and other causes, have been reduced to small and insignificant portions of land, we certainly think that it would be clearly inexpedient to employ the proprietors of them in the capacity of Darogahs; and we hold the same opinion with respect to those agents, or farming contractors, who manage the Zemindarries of those proprietors who do not reside within them, which, we are concerned to find, is by no means an uncommon case. But we are much disposed to think that in many other cases, you might with advantage to the public peace, avail yourselves of the services of that class of persons in the administration of the Police; more particularly when this Department shall have been transferred to the superintendance of the Collector. The internal security and good order, which is represented to prevail in Cuttack, in the Jungle Mehals, and in the territory near Delhi, under the management of Mr. Gardner, in all of which the more considerable Zemindars officiate as Darogahs, is a consideration, which weighs with us in favor of a trial of the principle in other parts of our possessions. We also find, from the report of the Superintendant of Police in the Lower Provinces, dated the 15th June, 1811, that in the Zillah of Rungpore, the Zemindars had, in many instances, rendered effectual assistance, when required, in the apprehension of offenders; that they communicated to the Police intelligence of the crimes occurring within their estates; and that he himself generally received similar communications from the Zemindars. It is not our intention to pursue this matter further; leaving it to your consideration, whether means might not still be devised for obtaining the co-operative service of those Zemindars in each Zillah, who possess a local influence within it; and who, if they could once be brought to lend their voluntary aid in the preservation of the public peace and security, could not fail

* As noticed in par. 8.
† Para. 144 of general letter dated 9th November, 1814.

fail essentially to promote that important purpose; and without it any measures of Police, however well concerted they may be in other respects, must still ever be materially defective. We shall only add, that whether it be found expedient, or not, to entrust the Zemindars with the authority of Police Darogahs, it certainly is so, that they may be made responsible, under severe penalties, for giving information of public offenders; we therefore highly approve of the Regulations IX. of 1808, I. of 1811, and III. of 1812, which provide for that necessary object."

173. The following extracts from part of the Reports before us, (and which correspond in substance with others, too long to be here inserted,) will exhibit the opinions of several of the Magistrates, in the Upper and Lower Provinces, on the question above stated.

174. The Magistrate of the City of Benares (in paragraph 37 of his letter, dated 21st October 1816,) observes: "With respect to employing, as Darogahs of Police, the proprietors of those estates not in the hands of Agents and Contractors, and which have not been reduced to small and insignificant portions by the operation of sales and other causes, few of them, I apprehend, would accept the office, and there are fewer still, who would not abuse it. If a Landholder should undertake to observe all the rules and forms framed for the guidance of Police Darogahs; to render himself liable to the penalties to which those Officers are subject, and to the inconvenience of continual attendance upon the Magistrate and the Courts of Circuit; it would be solely with the view of obtaining for interested purposes, an accession of power within the limits of his own estate; and it is obvious that the Magistrate in such an estate, could exercise no more authority than the Landholders would allow him."

175. The Magistrate of Bundlecund, in his letter of the 9th November, 1816, (paragraphs 29 and 30,) remarks, "much as the effectual co-operation of the Zemindars is to be desired to the furtherance of the Police, if it is only to be obtained at the expense of their restoration to that independant controul which they exercised, with so much abuse, under the former Government, (and without it their aid will never be cordially given,) the benefit will, in my opinion, be purchased at a price quite inadequate to the value of the object. There was no more common mode of revenging old standing feuds under the former rule, than for the Zemindars of one village to employ those very watchmen to thieve in the village of their opponents, and the height to which intestine disputes prevailed, in almost every village, and the assassinations and murderous conflicts, unpunished and unenquired into, to which they gave birth, together with the general oppression exercised by the more powerful of the Zemindars over their subordinate brethren, and which is now kept in check by the mere influence of our Government, would, I imagine, if minutely examined into, and specifically detailed, exhibit a state of things fully conclusive of the truth

truth of my assertion. There are other strong objections, in my opinion, to the plan of making the Zemindars Police Officers; independently of the abuse which it would inevitably give rise to. The check we now have on Police Officers by dismissing them from the service, or translating them from one Thannah to another, when we even suspect their influence to be too great, or to be misapplied, would not exist with respect to Zemindars.—A long continued system of oppression would be borne by the people of a village, from being habitually used to the authority of the Zemindars, or from fear of future consequences, without any complaint coming to the ear of the Magistrate: but no such local influence, or habitual superiority, is so likely to prevent complaints being brought forward against the present class of Police Officers."

176. Mr. D. Scott, late Magistrate of Zillah Rungpore, in his letter of the 8th March, 1817, adverting to the suggestion of the Honorable Court of Directors, for investing Zemindars with the charge of the Police, states concisely, "Although there can be little doubt that they have the means of making it most efficient, yet with reference to their general character, and that of the men by whom they are usually swayed, I do not think they could, with safety, be entrusted with the necessary powers which it may with certainty be predicted they would forthwith pervert, towards the furtherance of their own individual views."

177. The late Magistrate of Zillah Rajeshahye, Mr. H. Shakespear,* has expressed his sentiments more fully, and with reference to the rules now in force, as follows.

"The great difficulty is the absolute necessity of the aid of the Zemindars, and the strong objections which arise to giving them any power; not only because they are naturally supine, and glad to be exempted from the trouble and responsibility of Police; but that they are sure to delegate any power given to them, to inferior agents; who are still more likely to abuse it than themselves. The best regulations, therefore, are those, which obtain the greatest assistance from the Zemindars, with the least possible given power. There is much difference between investing them formally with powers of Police; and allowing them to exercise a certain degree of authority, which they all do on their estates, in the adjustment of the petty disputes of their Ryots; of which with our limited means of attending to such complaints, we ought not to be too jealous. In fact the Commissions of Police which have been granted to the Landholders by Regulation XII. 1807, gave them little more power, and exacted little more from them, in

* In his letter, dated 25th January, 1816, par. 95 to 103.

in aid of the Police, than they were always expected to afford. By Regulation III. 1812, and Regulation VIII. 1814, Zemindars are directed to give punctual information of all crimes committed on their estates; and by Section III. Regulation XXII. 1793, they were required to give every aid to the Police officers in the performance of their duty; and it has long been the common law of this country that they and their local agents, as well as the heads of villages, should assist in the discovery and apprehension of offenders of every description. If a person is apprehended in the act of committing theft or burglary, or decoity, he is detained in custody by the head people of the village, or the Zemindarry servants. He is then usually conveyed to the Zemindarry Cutcherry, and from thence to the Thannah. All informations of crimes are also, in the first instance, given at the Zemindar's Cutcherry; and the usual process, or a summons, or warrant being issued by the Magistrate, or Darogah, is for the peon or burkundaz, serving it, to go to the village in which the person summoned resides; and require the gomashtah, pyke, or head people, to point him out or cause his attendance. If they do so, he is taken into custody; if not, the Police officer obtains from them a return in writing that the person is not to be found. Rules may be wanting to enforce the faithful discharge of these several duties, by attaching penalties to the neglect, or evasion of them: but short of making the Zemindars Darogahs, I do not see how their aid, or that of their dependants, can be more effectually brought into action than they are by an adherence to the above mentioned usages and regulations: excepting, indeed by making them responsible for the attendance of their Ryots in cases of serious affrays, as before observed. There are not more than two or three Zemindars in this district, whom I could recommend to be appointed as Police Darogahs, under the rules in force in Cuttack and the Jungle Mehauls. At all events, whether the Zemindars are appointed Darogahs, or not, I think it is extremely desirable that the aid required from them in the management of the Police should be formed into a Regulation; and printed in a convenient form; so that they might be able to purchase copies of it, and inform themselves of what is expected from them. At present I have no doubt, that many of them are less active than they otherwise would be, from fear of being called to account for the exercise of any authority in matters of Police; but from my experience of the general character of the Zemindars of this province, I feel convinced that the power of issuing warrants, under their own seal, would be liable to the greatest abuses. If they could be guilty of the offences noticed in the 11th paragraph of the Honorable Court's letter, with their present limited power; how much would the temptation and opportunity of committing such unwarrantable acts be augmented by the power they would then possess; not only of charging their refractory tenants with serious crimes, but of seizing and securing their persons, until they had satisfied their arbitrary and unjust demands of rent."

178. But the most ample discussion of the subject is contained in Mr. J. B. Elliott's "observations on Police," dated 11th of April, 1816, under the head of *Zemindars*. We beg leave to refer for particulars to the copy of those observations, which was submitted to Government on the 6th December 1816; and shall only subjoin the following Extract from them in this place.

" I next come to consider the expediency of placing the Police in the hands of the Zemindars. On a subject which has exercised the judgment and abilities of many eminent men, it becomes me to speak with deference. It may be remarked however, that as the Court seems to restrict its recommendation of the measure to those cases in which the proprietors of extensive Zemindaries, residing on their estates, retain the management of them in their own hands, this description would apply to so small a class of persons, as scarcely to deserve consideration. For almost all the great Zemindars, with whom I am acquainted, whether resident, or otherwise, manage their estates through the medium of Farmers, holding under various tenures; but generally so contrived that all responsibility in matters of Police shall be so divided, and so easily shifted, as in fact to attach to none of them. Neither are the general habits and characters of the Zemindars such as to qualify them, independently of other considerations, to officiate as Officers of Police. The greater Zemindars, spending their days in all manner of debauchery, are rarely equal to the management of their own estates, commonly entrusted to some unprincipled Gomashta, or Dewan; while the greater degree of activity usually possessed by the smaller Zemindars, is chiefly displayed in promoting affrays, and oppressing their Ryuts. Nor would Zemindars of any respectability accept the office, if accompanied by adequate responsibility; and in the event of its being conferred on Zemindars of another description, or on any of them without heavy responsibility, it would speedily tend to the ruin of the country."

" No satisfactory conclusion can be drawn from the test of experience in favor of the system of entrusting the Police to the Zemindars. It may, no doubt, under judicious supervision, and assisted by certain local peculiarities, have answered in the Jungle Mehals, Hurryana, and a few other Districts; but a similar argument may be adduced in favor of every other system that has been adopted. In fact, it appears to me that it is to the vigilant control exercised by the Magistrate, rather than to any peculiarity in the distribution of powers among the Natives, that we must look for the efficiency of all systems of Police in this country. At all events, the District of Burdwan may be adduced as an instance of the practicability of approaching towards attainable perfection through the Agency of the Thannadary system; and the general state of the Police of the six Districts contained in this Division (the Patna Circuit) may be instanced to shew that it is not incompatible with the preservation

servation of the Peace throughout a very extensive, opulent, and flourishing portion of our Empire."

179. The sentiments of the Court of Nizamut Adawlut, on the general question of employing the Landholders as Officers of Police, have been submitted to Government at different times, and particularly on the 23d May, 1807, and 1st June, 1808. The advantage and necessity, for many purposes of Police, of compact local jurisdictions; the impossibility of such being maintained under the Landholders, from the subdivision and intermixed situation of estates; the disqualification of a considerable portion of the Landholders, from age, sex, education, habits, and character, for executing the requisite duties of Police Officers; and the danger of again entrusting indiscriminately a power which, as remarked in the preamble to Regulation XXII. 1793, "in numerous instances proved the means of multiplying robberies and other disorders, from the collusion which subsisted between the perpetrators of them, and the Police Officers entertained by the Landholders, and Farmers of land;" appeared to the Court decisive objections against reinvesting the Landholders and Farmers, in general, with the exclusive charge of the Police.—But those objections did not appear applicable to the employment of such of the Landholders, Farmers, and other inhabitants of credit and influence, as from their qualifications, and character, might be considered deserving of confidence, and disposed to make a proper use of the means which they possess, in promoting the maintenance of the peace, preventing the commission of crimes, and apprehending offenders in concert with the Police Darogahs and other Police Officers employed by Government.—The Court were of opinion, that the local knowledge, influence, and co-operation of such persons duly selected by the Magistrates, and appointed with the sanction of the Governor General in Council, might be of essential aid to the Police Establishments maintained on the part of Government, in the Lower Provinces; and that it was therefore expedient to provide by a Regulation for granting commissions to respectable Hindoo and Mussulman inhabitants of the several Zillahs in those Provinces, authorizing them to act as Aumeens of Police, with certain specified powers; and under such restrictions as might be calculated to guard against an abuse of the authority entrusted to them.

180. The rules proposed by the Court for this purpose, and approved by Government, were enacted for Bengal, Behar, and Orissa, by Regulation XII. 1807; and extended to the Divisions of Benares and Bareilly, by Regulation XIV. 1807; But, either from an unwillingness on the part of the Landholders to accept the Office of Police Aumeen, on the terms proposed; or from the Magistrates, in general, not judging it expedient to employ them in that capacity, the provisions for the appointment of Aumeens of Police were not found available for the object intended by them; and were therefore rescinded by Section 6, Regulation VI. 1810.

181. The preamble to that Regulation, which was enacted " for defining the penalties to which Zemindars and others shall be subject for neglecting to give due information of robberies, and for harbouring robbers, " further declared there were " grounds to apprehend that some of the Zemindars, and others, instead of aiding in the suppression of offences so injurious to the peace of society, have countenanced and supported the offenders, with the view of securing exemption for themselves from their depredations, or even of participating in their plunder."—All Zemindars, Talookdars, and other proprietors of lands, whether Malgoozary or Lakheraj, all Sudder Farmers, and under renters of every description, all dependant Talookdars, all Naibs and other local Agents, and all Native Officers employed in the collection of the revenues and rents of lands on the part of Government, or the Court of Wards, were therefore declared especially accountable (as they had already been by Regulation IX. 1808, respecting proclaimed Decoits,) under penalties of fine or imprisonment for neglect, to make " an early and punctual communication to the Magistrates and Police Darogahs, either publicly or secretly as they may judge proper, of all intelligence they may obtain respecting the resort to any place within the limits of the estate or farm held or managed by them, of any person or persons of the different classes of people ordinarily known by the appellation of Decoits, Cozauks, Thugs, or Budducks, or any other description of robbers." Zemindars, Talookdars, and Farmers, holding their tenures immediately from Government, were at the same time made liable to a forfeiture of their estates, or farms, if convicted of having afforded any assistance to robbers of any denomination ; and other persons convicted of the same offence, were declared subject to fine and imprisonment, proportionate to the offence.

182. These provisions have been since extended, by Regulations I. 1811, III. 1812, and VIII. 1814, to render the Landholders, and other descriptions of persons abovementioned, accountable for an early communication to the Magistrate, either secretly or publicly, of all information which they may obtain respecting the residence of any notorious receiver or vender of stolen property within the limits of the estate or farm, held or managed by them, or respecting the commission of murder, robbery, house-breaking, theft, or arson, perpetrated within the limits of the estate or farm, held or managed by them respectively; and with a view to render these provisions the more effectual, the following rule has been recently enacted in Section 33, Regulation XX. 1817.

" The Police Darogahs shall take every favorable opportunity, when employed on local enquiries, as well as upon other occasions, of explaining to the Zemindars, Talookdars, and other proprietors of land, Malgoozary or Lakheraj ; to the Sudder Farmers, and under renters of land, dependant Talookdars, Naibs, and other local

Agents,

Agents, and to all Native Officers employed in the collection of the revenues, and rents of land, on the part of Government, or the Court of Wards, the duties incumbent on them, and the responsibility attached to them, under the provisions of Regulations IX. 1808, VI. 1810, I. 1811, III. 1812, VIII. 1814; and any other Regulations in force, to communicate to the Magistrates and Police Darogahs, either publicly or secretly, all information which they may obtain respecting the commission of murder, robbery, house-breaking, arson, or theft, within the limits of the estate or farm held or managed by them respectively; or respecting the resort of any known robbers, of whatever description, or the residence of any notorious receiver or vender of stolen property, within such limits; as well as to afford their assistance in the apprehension of proclaimed offenders, and of all persons for whose apprehension warrants may have been issued by the local Magistrate, in pursuance of Section IX. Regulation III. 1812, and generally to co-operate with, assist, and support the Police Officers of Government in maintaining the peace, preventing as far as possible, affrays, and other Criminal acts of violence, or apprehending the offenders, under the rules and restrictions which have been enacted and promulgated in the Regulations."

183. On a review of all that has been stated upon the subject of services actually required from the Landholders and farmers of land, or their local Agents, in support of the Police, or which can hereafter be expected from them, on the grounds of past experience; we must express our entire concurrence in the principles, on which the Regulations that are now in force appear to have been founded, viz. that the Landholders, and Farmers, or their Agents, (with few exceptions,) cannot safely be entrusted with authority as exclusive, or principal Officers of the local Police; but that from their situation, influence, and consequent responsibility, they should be held accountable, under penalties, for early communication to the Magistrates, or nearest Police Officers, of all information received by them, respecting the commission of heinous crimes; or the resort of notorious criminals, (especially such as have been proclaimed, or specifically described in the Regulations,) within the limits of the estates or farms held or managed by them respectively.

184. We shall conclude this head of our Report by observing, that the principles above mentioned are recognized, and more fully illustrated, in the Police Report, dated 29th September, 1809, which is referred to by the Honorable Court of Directors. It was therein justly remarked, that "by these means, without investing the Zemindars and others with any actual power, respecting the Police, we should obtain full information respecting the commission of public offences. It is to the defect of that information, more than to any other cause, that the present imperfect state of the Police is to be attributed." This de-

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fect has been since, in a great degree, supplied; and the annual Reports of the two Superintendents of the Police, as well as the half yearly Reports of the Judges of Circuit, demonstrate, that a very considerable amelioration of the Police, attended with an equal diminution of crimes, throughout the Country, has been the result.

Criminal Justice.

185. In considering the first suggestion under this head, * viz. the necessity of having recourse to Native Agency for the more effectual redress of minor offences, such as calumny, abusive language, slight trespasses, and inconsiderable assaults, the prevention of which is of importance to the peace and welfare of Society, it must be acknowledged that the present Judicial Establishments are altogether unequal to the speedy trial and decision of charges of this nature, and that under the restrictions prescribed by the Regulations in force, as observed by the Honorable Court, † this inadequacy of the means for checking these offences, against the peace and order of the Community, and the consequent impediments in the way of obtaining redress of the injuries which they involve, go in effect nearly to tolerate the unrestrained commission of them. We must likewise express our entire acquiescence in a further remark made by the Honorable Court on the provisions of Regulation III, 1812,‡ viz. that "these provisions are certainly calculated to discourage the institution of vexatious and unfounded charges, but they operate also to discourage the bringing forward all charges of misdemeanors and petty offences, whether they be true or false."

On this subject it appears sufficient to cite the following Extract from the letter of Mr. H. Shakespear, late Judge and Magistrate of Zillah Rajshahye, dated the 25th January, 1816. §

"The next point dwelt upon by the Honorable Court is the insufficiency of the public functionaries under the present system, for the administration of the Laws, for the prevention and punishment of petty misdemeanors.—It is justly observed by the Honorable Court, that the restrictions provided by Regulation III. 1812, must not only operate to discourage unfounded charges, but also to the discouragement of all charges for petty offences, whether they be well founded or not. Regulation VII. of 1811, first prohibited the Darogahs from interfering in petty misdemeanors, in order that their attention should be exclusively directed to the maintenance of the public tranquillity, and directed

* See Para. 10.
† In Para. 149 of their General letter, dated 9th November, 1814.
‡ In Para. 158 of the letter abovementioned.
§ Para. 106 to 114.

directed that such charges should be preferred in the first instance at the Magistrate's Cutcherry; and in 1812, Regulation III. was enacted to restrain Vakeels and Agents from conducting such prosecutions; and heavy expences were imposed on the institution of such charges. From the following statement of the number of bailable offences, instituted previously and subsequently to those Regulations, the operation of them may in some degree be observed. In 1810, 938 cases were preferred to the Magistrate. In 1811, 1830; in 1812, 1261; in 1813, 1260; in 1814, 1655; in 1815, 1417. In 1811, the cases preferred to the Magistrate nearly double those of the former year. In the year following the number was again reduced, but is rising again, notwithstanding the impediments opposed to the institution of complaints of this description. Holding out expectations of redress which are seldom realized, forcing people from their families and occupations, and detaining them in attendance on our Courts, till the case, in which they are summoned as Witnesses or Defendants can be brought forward, are not the only evils attendant upon the rules now in force for the investigation and trial of petty offences. If a charge of inconsiderable assault, unattended with any aggravating circumstance, is preferred to the Darogah, he must refer the complainant to the zillah Court; there also, in the multiplicity of business of more importance, little attention can be paid to it: and prosecutors seeing no other way of obtaining the investigation of their complaints, hope by an exaggerated statement of their grievances, to attract the attention of the Magistrate, or induce the Darogah to take cognizance of the case. Thus if a person is beaten on the road, a piece of cloth or a rupee is alleged to have been taken from him, and an information lodged of a high way Robbery.—If beaten in a house, his house is sure to have been plundered; and if the dispute should have occurred at night, it has been attacked by a gang of Dakoyts. Hence the people are taught to think lightly of falsehood and perjury; the little morality they have is weakened, and those distinctions destroyed which are so necessary to guide the decision of the Judge in adapting the degree of punishment to the nature and circumstances of the offence.—I concur most fully in the plan suggested in the 160th paragraph of the Honorable Court's letter, for the employment of the Natives in the trial of petty offences, as the only possible means, (short of increasing the number of European Officers,) of discouraging and preventing those abuses."

186. Mr. Shakespear then adverts to a letter addressed by him to the Moorshedabad Court of Circuit on the 18th June, 1815,* in the following terms.

On

* A copy of this letter, with Extract of a letter from the Register of the Nizamut Adawlut to the Moorshedabad Court of Circuit on the subject of it, dated 8th September 1815, (Paras. 3 and 4,) are annexed to this report in the appendix D.

"On the 18th June last, in a letter to the Court of Circuit of this Division, I fully explained the reasons why it was impossible for the European Officers of this Court to prevent the accumulation of the business in the Foujdary Department; and I then suggested, with a view to relieve the Magistrate's Court from the present load of business, that the Magistrate might be allowed to refer all cases for trial to his head Assistant (empowered under similar rules and restrictions to those enacted by Section IX. Regulation XXIV. 1814, with reference to the trial of Civil Suits) excepting those of Murder, Dakoity, and affrays attended with Homicide or Wounding; and, if necessary, for commitment to the Court of Circuit, without returning them to the Magistrate, and giving him the trouble of going over the proceedings a second time; and that the powers of an assistant, when considered duly qualified, should extend to half of those at present vested in the Magistrate, whose attention would then be given more particularly to those cases; and some time allowed him to attend to the general improvement and amelioration of the Police. I likewise recommended that the Mahomedan Law Officers of the Zillah Court should be vested with the powers at present delegated to the assistants, subject to the same restriction of reference from, and revision by the Magistrate, and to some further rules for their guidance, which it might be necessary to enact. It struck me that no valid objections could be urged against such an arrangement, which did not apply two-fold to the present mode for conducting the criminal business, that the Registers (that is, Head Assistants,) were generally speaking fully qualified to conduct trials for Burglary and Theft, &c. and that it could not well be objected that the Mahomedan Law Officers, whose opinions not unfrequently influence sentences of death, were unfit to decide on cases of petty assault and theft, more particularly as their decisions would be subject to the revision of the Magistrate. In the course of my letter I pointed out to the Court of Circuit, that supposing thirty petitions (and there were seldom less) were presented to the Magistrate in petty cases, every week, they would, at a low calculation, involve the summons of six hundred defendants monthly; that if one half of them attended, it was impossible their cases could be disposed of in the month, and that there were at that time no less than six hundred and eighty-five persons on bail before the Court. If circumstances should render it expedient, one or more of the Sudder Aumeens might also be employed in the trial of petty offences; and although it would be necessary to increase their salaries on that account, there can be no doubt that the fines imposed by their decisions would fully reimburse that expence to Government."

187. Having stated the sentiments of one Magistrate in favor of the measure proposed by the Honorable Court, we shall also exhibit those of another Magistrate, on the opposite side of the question, viz. of Mr. Wauchope, the Magistrate of

of Bundleecund, from whose letter, dated the 9th November 1816, the following is an extract.*

"Inconveniences certainly must be felt from the operation of Regulation VII. of 1811, prohibiting Darogahs of Police from hearing petty complaints; but I am fully convinced that they are as nothing compared with the universally acknowledged benefits of that interdiction—A most fertile source of discontent has undoubtedly been removed by the abrogation of the former powers of the Darogahs; as also by the enactment of Regulation III. of 1812, which places a very salutary check in the hands of the Magistrate for restraining malicious and unfounded complaints. To revive those obnoxious powers and to place them in the hands of Native Commissioners, would, I conceive, be only to increase the evil, in as far as the number of Agents would be multiplied, and the Magistrate's means of superintending and checking them, proportionably diminished. But the inconvenience actually produced by the want of speedy redress for abusive language, calumny, and inconsiderable assaults, is more immaterial, and these injuries are much less seriously felt, in this Country, than they would be in a European community. That a remedy for the evil would conduce to the better order of society, and to the improvement of the morality of the people, there can be no doubt; but I am of opinion that the inconvenience had better be endured to the extent that it does exist, than that the remedy should be entrusted to Native Agency; and that the only advisable mode of facilitating redress for petty injuries, will be by diminishing the jurisdictions of Magistrates."

188. For the sentiments of other Judicial Officers on the question of employing Native Aumeens to aid the European tribunals in the administration of Criminal Justice, we beg leave to refer to the letters noticed in the margin.† There is a considerable difference of opinion upon the expediency of such an arrangement; and we confess that we feel much hesitation in proposing to vest any Native Commissioner with judicial powers in criminal cases, except under the immediate inspection and controul of the Zillah or City Magistrate. If however it be deemed proper, on grounds of policy and justice, to provide for the redress of injuries in petty cases

* Paras. 32 and 33.

† *For the arrangement.*

1. Minute of Officiating Judge of the Benares Provincial Court (Mr. Fortescue,) dated 20th February 1816, paras. 17 and 18.
2. Letter of late senior Judge of the Moorshedabad Provincial Court (Mr. T. Brooke,) dated 6th May 1816, paras. 14 and 15.
3. Letter of Mr. T. Smith, late 2d and now senior Judge of the same Court, dated 13th March, 1817, Head, *Police*, para. 12.

Against it.

1. Minute of 4th Judge of Bareilly Provincial Court (Mr. C. Elliott,) dated 12th June, 1816, para. 24.
2. Ditto of senior Judge of Calcutta Provincial Court (Mr. Wintle,) dated 20th March, 1817, para. 23.
3. Letter from Dacca Provincial Court, dated 4th December, 1817, para. 31 to 34.
4. Ditto from late Magistrate of the City of Patna, (Mr. H. Douglas) dated 20th February, 1816, para. 11.
5. Observations of Mr. J. B. Elliott, Magistrate of Sarun, on Criminal Jurisprudence, dated 20th May, 1816, para. 47.

cases of abusive language, calumny, assault and trespass, there seems to be no alternative, under the impracticability of bringing the whole of such cases before the European Courts, but either to allow a Civil action for personal damages to be instituted and tried in the Courts of the Moonsiffs, or to employ the Law Officers of the Zillah and City Courts, or any other persons whom it may be judged advisable to appoint for this purpose, as Foujdarry Aumeens, to try cases of a criminal nature punishable, on conviction, by fine and imprisonment, within a limited extent, which may be referred to them by the Magistrates, under provisions similar to those prescribed for references to the Assistants in Section XXI. Regulation IX. 1807.

189. By Section XIII. Regulation XXIII. 1814, the Moonsiffs are precluded from taking cognizance of claims for "damages on account of alleged personal injuries, or for personal damages of whatever nature;" and a similar provision was previously enacted in the seventh Clause of Section XIV. Regulation XLIX. 1803, in consequence of "experienced litigiousness in such cases."—It may therefore be considered objectionable to declare persons injured by petty offences of a criminal nature, such as abusive or calumnious language, inconsiderable assaults, and slight trespasses, at liberty to sue for damages in the established Civil Courts (including those of the moonsiffs) if they prefer such mode of proceeding to a Criminal prosecution before the Zillah or City magistrate; though it would be productive of the following advantages.—*First.* It would prevent the Magistrate's file from being loaded with complaints of the nature referred to.—*Secondly.* It would save the necessity of attendance at the Magistrate's station to Complainants, Defendants and Witnesses, in such cases.—*Thirdly.* The charge of stampt paper for the plaint, according to the rates prescribed in Section XIII. Regulation I. 1814, would be higher than that fixed by Section XVIII. of the same Regulation, for Complaints of this description when preferred to the Magistrate; and would so far operate to discourage unfounded accusations. At the same time, the entire expence of a Suit in the Moonsiff's Court would be considerably less than what must be incurred by a prosecution before the Magistrate, under the provisions of Section II. Regulation III. 1812.—*Fourthly.* An Appeal to the Zillah or City Court, which might be referred for trial to a Sudder Aumeen, would be open in all cases decided by a Moonsiff.—*Fifthly.* It would supply the stated defect in the existing Judicial system, with respect to petty offences and the injuries sustained from them, without re-investing the Police Darogahs with authority to receive complaints of such offences.

190. If the objections to a Civil action for damages in the cases specified, should appear to counterbalance and outweigh the above-mentioned advantages, we must, notwithstanding the opposite sentiments of some of the Judicial Officers, express our

own

own opinion to be in favor of restoring to the Police Darogahs, (under penalties for an abuse of it,) the power of receiving and transmitting to the Magistrate, unless a Razeenamch be delivered by the Complainant within forty eight hours, all petitions which may be preferred to them on the prescribed stampt paper, containing a charge of abusive or calumnious language; or of an inconsiderable assault or trespass, or generally of any petty offence, the charge of which is now required to be preferred directly to the Magistrate.—It is probable that this power would be sometimes perverted by the Police Darogahs to a selfish and corrupt purpose; and we doubt not that it was frequently so abused, when formerly possessed by them before the enaction of Regulation VII. 1811. But we have no reason to believe that the abuse was carried to any oppressive excess; and apprehend there are stronger grounds for inferring, that the people generally suffer more from the restrictive rules now in force, by the personal inconvenience, loss of time, trouble and expence to which they are exposed; by the necessity of attending to prefer and prosecute their trivial complaints, at the distant Cutcherry of the Zillah Magistrate, under the provisions of Sections II. and III. Regulation III. 1812; the substance of which is thus stated by the Honorable Court of Directors.*

" By this Regulation the Complainant is required to deposit, in the hands of the Nazir of the Court, at the Sudder Station, a sum equal to the maintenance of his Witnesses for one whole month, before his complaint can be entered on the record," (or rather proceeded upon;) " and to continue to make such advances at the expiration of every month for the ensuing one, as long as his Witnesses are detained in attendance on the Magistrate. — Before however any process can be issued in such a case, the Magistrate is required to examine the prosecutor as to the specific facts, and if he sees grounds to distrust the truth of the charge, must summon the witnesses, or as many of them as he may judge proper, for examination, as to their knowledge of facts and circumstances; the Witnesses being maintained also by the Complainant during this preliminary enquiry; upon the result of which depends, whether the prosecution shall be admitted or not. It is further provided by the same Regulation, that Complainants shall conduct their own causes in person, unless for substantial reasons, shewn to the satisfaction of the Magistrate."

191. We must further offer it as our decided opinion, that if a criminal prosecution only be allowed, for the redress of personal wrongs in the cases under consideration, (which often lead to affrays, and other crimes of a more serious nature, when not redressed by the established Courts of Judicature,) it will be indispensably necessary to appoint the Law Officers of the Zillah and City Courts, or some other

* In para. 158 of their General letter, dated 9th November, 1814.

other Native Officers, to be Foujdarry Aumeens, for the purpose of aiding the Magistrates and their Assistants in this part of the general administration of Criminal Justice; as already intimated in the 188th paragraph of this Report.

192. The Court of Directors, in the 159th paragraph of their general letter, dated 9th November 1814, observe, "What we have here stated in regard to calumny, abusive language, slight trespasses and inconsiderable assaults, holds equally good with regard to adultery, fornication and rape; which are judicially cognizable in the Foujdarry Department. The prosecutors in such cases are subject to the same impediments, the same heavy expences, and the same delays, before justice can be obtained, Here again we recognize a state of things which cannot fail to have an injurious effect on public morals:" and in a subsequent paragraph (the 162d) after adverting to the proposed settlement of disputes respecting caste and moral discipline in the accustomed modes of the Country through the spiritual heads of tribes, they add "Questions of marriage, adultery, fornication and perhaps rape, would properly fall within their cognizance."

193. With respect to marriage, we are not aware of any objection to this mode of adjustment, when the parties may prefer it to a regular suit in the Civil Courts, under the rules which have been long in force for the cognizance of all suits and complaints respecting marriage in those Courts. Cases of fornication and adultery are also frequently adjusted without a Criminal prosecution. It is observed, by one of the Magistrates (Mr. J. B. Elliott) * that "the higher orders of Natives never bring their adulteries and fornications into our Courts. And affairs of this description among the lower orders are generally quietly settled by Punchayet, without the knowledge or interference of our Courts." It does not appear necessary therefore to make any express provision, by a legislative enactment, for the adjustment of such cases by Punchayets. But we are of opinion that for the maintenance of good morals, and the punishment of flagrant offenders, in such instances, as well as in the more atrocious case of rape, the Criminal Courts should be open to the parties injured, or their proper guardians, whenever the interposition of the Magistrate may be required for the ends of justice. Section VI. of Regulation XVII of 1817, which has been recently enacted by Government on the suggestion of this Court, contains such provisions as appeared necessary and expedient for the above purpose; and we are not aware that any others are now called for; unless it be to distinguish charges of fornication, adultery and rape, when preferred by the injured parties, or their legal representatives, from complaints of petty offences, such as calumny, abusive language, slight trespass, or inconsiderable assault, in Section 2, Regulation III. 1812; and any other Regulations in force, which

* In his observations on Criminal Jurisprudence, dated 20th May, 1816, para. 50.

which blend them together and subject the prosecution of them to the same restrictions and expence, as if viewed in the same light by the Legislature; and regarded more as private injuries, or trivial misdemeanors, than as crimes of serious consequence to the welfare and happiness of the community.

194. The third proposition of the Honorable Court of Directors, for the more effectual administration of Criminal Justice, as stated in paragraph 10 of this Report, has been already considered as far as it respects a transfer, to the Collectors, of the judicial authority now vested in the Zillah Magistrates; but it remains to notice a further part of the proposition referred to, viz. that the Zillah Judge be vested with Criminal Jurisdiction in cases of greater magnitude, not being of a capital nature, subject to a revision of his sentences, beyond a certain extent of punishment, by the Court of Circuit, in like manner as the sentences of the Courts of Circuit, in certain cases, are now liable to the revision of the Nizamut Adawlut.

195. This arrangement is suggested in the 167th paragraph of the Honorable Court's letter, dated the 9th November, 1814; and the reasons for it are specified in the 164th paragraph as follows; "There is no branch of judicial administration in which promptitude of decision is more necessary, than that which is now under our consideration, (Criminal Justice;) and yet none in which the want of it is more felt. The length of time which elapses between the apprehension of an offender, and his trial before the Circuit Judge, is an evil of very considerable magnitude, which it is of primary importance to remove as far as practicable. It operates not only with great injustice on the persons accused, but is attended with various other consequences highly prejudicial to the morals of the people, and to the due administration of Justice, by the opportunities which it affords for imposing on the Courts, by fabricated defences, and perjured testimony. The inconvenience to Witnesses is also necessarily very considerable.—But it is rendered still more serious by the necessity which they are under, of twice attending at the Sudder Station, first on the previous examination before the Magistrate; and secondly, at the time when the Circuit Court assembles; nor can we overlook the heavy expenditure which falls upon the Government, for the maintenance of Witnesses, occasioned by this circumstance alone."

196. It is added by the Honorable Court* that these evils and inconveniences, as they concern both the people and the State, have been repeatedly represented by their Judicial Servants, under this Presidency; and have also been brought

* In paras. 165 and 166.

brought under notice by the Select Committee of the House of Commons for India Affairs.

197. It cannot be denied that the evils and inconveniences here mentioned do still exist; and the continuance of them, in some degree, appears to be inseparable from the existing system of administering Justice in Criminal Cases of a serious nature, by means of a Court of Circuit holding half yearly or other periodical Jail Deliveries.—We cannot, however, propose the abolition of so essential a part of the present judicial system; which was founded on the principles stated in the following Extract from the Minute of Lord Cornwallis, recorded on the 1st December, 1790.

"With regard to the Subordinate Courts for the trial of offenders, when the great extent of this Country is considered, the impossibility of sending all persons charged with capital offences to Calcutta, in order that their trials might be conducted under the immediate superintendance of the Nizamut Adawlut, will be apparent. The prisoners would be exposed to great hardships, from being obliged to perform a long journey under restraint; many would escape on the road, and the prosecutors and the witnesses would suffer much inconvenience from being compelled to abandon their private affairs, and to proceed to so great a distance to carry on the prosecution. The trial of the Prisoners, from their number, would be retarded; and the sentences passed upon them, if carried into execution at a great distance from the place where the crime was committed, would lose the effect of public example. It is absolutely necessary therefore, that Courts should be established for the trial of offenders, in the districts in which they are apprehended; and as the final sentence of the Nizamut Adawlut, in cases of Life and Death, must be regulated entirely by the documents and evidence inserted in the record of the proceedings of these Courts, it behoves us to constitute them upon such principles as shall leave no room to doubt of the trials being conducted with ability and impartiality. The security of the lives and property of individuals depend, indeed almost entirely, upon the due Regulation of these Courts: for it is in vain for the Magistrates to apprehend offenders, if, from the misconduct of the Officers of the Criminal Courts, in which they are tried, they can elude the punishment due to their crimes, and return to their former malpractices: nor can the controuling power of the Nizamut Adawlut be exercised with any effect, unless the trials of the offenders are properly conducted in the Subordinate Courts. Humanity also shudders at the idea of giving sanction to any man's being deprived of his life or liberty, upon a mere record of a trial, held in another Court, established at the distance of two or three hundred miles, and

* In their fifth Report, dated 28th July 1812.

and without having the opportunity of examining the parties or the witnesses, unless we have reason to be satisfied, that the Prisoner has been allowed every opportunity of defending himself against the crime laid to his charge. The superintendance of the Courts, in which the offenders are to be tried, is therefore a trust of the greatest importance: and on the due discharge of which, the happiness of our subjects, and the prosperity of the Country, greatly depend. I am of opinion therefore, that it should be committed to Company's Servants of approved ability, and qualified, by a knowledge of the languages, &c. &c."

198. It may indeed be said, that a local Criminal Court, constituted as proposed by the Honorable Court of Directors, viz. under the superintendance of the Zillah Judge, aided by the Law Officers of the Zillah Court, would be founded on the same principles as those which regulate the constitution of the present Courts of Circuit; and that the Zillah Judge, if divested of the Charge of the Police, by the proposed transfer to the Collectors, would no longer be exposed to a bias for the conviction and punishment of offenders; which might be supposed, in some instances, to influence his proceedings and decision, when the duties of a Criminal Judge, and of a Magistrate in charge of the Police, are united in the same person. It might further be argued, that the Zillah Judge, if relieved from the superintendance of the Police, and the duties immediately connected with that department, would have sufficient leisure to attend to the deliberate investigation of Criminal charges within his cognizance; so as to leave no doubt of the impartiality of the trial conducted by him.

199. We confess, that the above argument has, in our judgment, considerable weight, and if the proposed transfer of the Police to the Collectors were practicable and unobjectionable, it would strongly support the arrangement suggested by the Honorable Court of Directors, as the most effectual means for remedying the serious grievances above stated; especially the delay which now occurs in the trial of Prisoners before the Courts of Circuit. It would not, however, obviate the necessity of a second examination of witnesses, in cases, wherein the Collector, in his capacity of Magistrate, might commit for trial before the Judge of the local Criminal Court; on which account, as well as with reference to the objections which have been stated against the expediency and practicability of transferring the Police, and duties [illegible] agistrate, to the Collectors, a modified arrangement (founded partly on the principles of that proposed by the Honorable Court, but leaving the Office of Zillah Magistrate, with the charge of the Police annexed to it, as at present,) appears to us, on full consideration of the subject, best adapted to existing circumstances. Before we offer our sentiments more at large upon this point, however, we beg leave to subjoin two Extracts; one from the Report of

a Court of Circuit, the other from a Magistrate, on the measure suggested by the Court of Directors.

200. The Dacca Court of Circuit (whose letter, dated 4th December, 1817, had not been received when the former part of this Report was written) express their opinion on the question under consideration in the following terms:* "To remedy as far as possible the evils and inconveniences originating from the protracted decision of trials committed to the Courts of Circuit, is of the highest importance, both to Government and the individuals concerned; but we are convinced the grievances often experienced may be, in a great measure, obviated by the timely and active exertions of the Magistrates, with respect to the mode of requiring the attendance of the prosecutors and witnesses, but it is sufficiently evident that a certain degree of delay and trouble must be experienced, and submitted to, in instances in which persons are apprehended for the commission of Crimes, whatever may be the arrangements adopted to prevent it. Some, no doubt, from a protracted decision, have escaped the punishment denounced against the crimes for which they were committed to take their trial, and instances might be found of individuals having been subject to serious hardships from the length of time that has elapsed before the final sentence has been passed. But an instantaneous investigation by an European Officer, must, in almost every case, be instituted, to counteract the disposition of imposing on the Courts by false and malicious complaints, and fabricated defences. It does not often occur that a man of a dangerous character, or an offender who has had intercourse with persons acquainted with the forms of the Courts, is so unwary, as, at any time, to disclose a circumstance that may eventually involve him in the guilt laid to his charge. In general, those who confess, are the wretched instruments of the more depraved and prudent transgressor; who, while he enjoys the substantial advantages accruing from the crime, is acquitted from a failure in the evidence against him. Admitting the many important benefits resulting from promptitude in the decisions passed by the Court of Circuit; and among them, the restraint which a speedy trial and decision might be expected to impose on perjured testimony; we conceive, that the effect would not be so extensively beneficial as may be expected. In every case in which a fabricated or exaggerated complaint is preferred, every arrangement imaginable is adopted to ensure the success of the undertaking, previous to the appearance of the prosecutor in the Criminal Court; but, in some instances, the best laid plans prove ineffectual from contradictions on essential points in the examination of witnesses before the Magistrates, and Courts of Circuit; and which arise from failure of memory in the attempt to repeat and detail circumstances, that, in reality, never took place. Thus, an innocent person sometimes escapes

* In Par. 35 to 40 of the letter referred to.

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escapes a sentence of punishment from the delay occurring in the final investigation. After mature consideration we have been unable to discover any essential benefits likely to be derived to the state, or community, from transferring the charge and administration of the Police to the Officers employed in the Revenue Department; and we are satisfied, that if the servants of the Company employed in that line perform the various duties connected with their situation, their time will be sufficiently and beneficially occupied. For the important reason therefore, that the business of the Criminal Courts will in no respect be more promptly or effectually executed under the superintendance of those Officers, wanting, as they must, some degree of practical experience; we beg leave to suggest the expediency of their powers being confined to their present sphere of duty. Before any further alterations or innovations be adopted, relative to the existing jurisdictions of Zillah and City Magistrates, and Courts of Circuit, it appears to us advisable that a full and conclusive trial should be allowed to the operation of the Regulations recently enacted; and which, relying on the zeal, ability, and judgment of the several Judicial authorities, we consider calculated to provide for an upright and sufficiently expeditious determination of the current business of the Courts."

201. The following is an extract from the letter of Mr. H. Shakespear, late Magistrate of Zillah Rajeshahye, dated 25th January, 1816, and already cited on other subjects.

"In * adopting the suggestions contained in the 167th paragraph of the Honorable Court's letter for improving the administration of Criminal justice, it is difficult to determine to cases of what nature, in commitment from the Collector as Magistrate, the powers of the Judge, in his Magisterial character, should be extended. There are very few cases on our Calendars, at present, of Arson or Rape, or Perjury, or Forgery, or Homicide, or Affrays attended with Homicide, or Wounding, or even of Theft to a considerable amount; and to extend the powers of a Judge to trials of this nature, would go a very little way towards relieving the Courts of Circuit, and attaining the object contemplated by the Honorable Court. At least five cases out of ten on the Calendar are cases of Burglary, a crime most prevalent, and certainly one to which a very heavy punishment is attached; but it is, at the same time, an offence in which the guilt or innocence of the person accused can be easily ascertained. It involves no intricate investigation, whilst the punishment affixed to it admits of no discretionary power in the Judge who tries the case. If therefore the suggestions of the Honorable Court should be acceded to by the Government, I would recommend that the power of Judges holding sittings on commitments from the Collectors, in

* Par. 120 to 127.

in his capacity of Magistrate, should be extended to the trial and punishment of the crime of Burglary; and of receiving goods stolen by Theft or Burglary; as well as to the trial of all cases of Arson, Rape, Perjury, Forgery, Homicide or serious affrays, or of Theft to any amount. The power which is now allowed to the Courts of Circuit, of making references to the Nizamut Adawlut, in any of the above cases, or in cases of high misdemeanors, should be granted to the Judges, in submitting the same to the Courts of Circuit. An English statement, specifying the names of the parties, the date of their commitment to the Judge, and an abstract of the case, with the sentence passed upon it, might be transmitted monthly to the Court of Circuit, who would have it in their power, collectively, to call for the proceedings of the Judge; and revise them; or order a further inquiry, as the circumstances of the case might demand. With such checks I should conceive it difficult, if not impossible, for the Judge to exercise improperly the power delegated to him, whilst the Court of Circuit would be relieved from a great part of their present labor, and a considerable sum saved to Government for the maintenance of witnesses. — The Courts of Circuit would still have the trial of cases of Murder, of Decoity, of receiving goods plundered in Decoity, and of highway Robbery; and the general control over the proceedings of the Collector as Magistrate, and the Judge in his Magisterial capacity.—Cases in which the offenders may be liable to suffer death would, as heretofore, be submitted by the Courts of Circuit for the final decision of the Nizamut Adawlut."

202. It has been determined by Government to extend the Judicial powers of the Magistrates, chiefly with a view to diminish the labors of the Judges of Circuit in holding the half yearly Jail deliveries; and to shorten the periods of the Circuits; which have, in many instances, been unavoidably protracted beyond the allotted time of Six Months.—In the 6th paragraph of Mr. Secretary Bayley's letter, under date the 15th March 1816, the Court were advised of the opinion of the Governor General in Council, " That the Magistrates may now be safely invested with an authority, under specific restrictions, to pass Sentence of punishment not exceeding imprisonment with hard labor for one year, and thirty stripes of the Rattan, on persons convicted before them of the offence of Burglary, when unattended with any aggravating circumstances; instead of committing such persons to take their trial before the Court of Circuit."—The grounds upon which this opinion was founded, were at the same time communicated to the Court in the following terms.—" The offence of housebreaking, as it prevails in this Country, is one of far less enormity and danger to the public, than the crime of Burglary in Europe.—It is now rarely attended with wounding or other acts of violence, or great aggravation; and it appears generally to be the opinion of the Judicial Officers, that the prescribed penalties for the offence may be mitigated, without hazard to the public safety; and in a

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manner which may tend to diminish the labours of the Judges of Circuit and of the Nizamut Adawlut; an object which it is extremely desirable to accomplish, as far as may be practicable.'

203. In the subsequent resolutions of the Nizamut Adawlut, under date the 21st August 1816,* a scale of punishments, to be adjudged by the Magistrates and Courts of Circuit, respectively, in cases of Theft and Housebreaking, by day or by night, with or without other acts of criminality or circumstances of aggravation, were submitted for the consideration of Government: and it was proposed to extend the powers of the Magistrate, in the infliction of punishment, to thirty stripes with a Rattan, and imprisonment with hard labor, not exceeding two years;—the Court observing, that in proposing this extension of the Magistrate's Judicial authority, they had been influenced, as well by a desire to provide more effectually for the relief of the Courts of Circuit, as to guard against the inadequate punishment of Theft and Housebreaking, by too great a reduction of the standard now established.

204. In reply to this suggestion the Court were informed, on the 7th February 1817, that the scale of punishments proposed for Burglary and Theft, as well as a further suggestion for a modification of Sections 7 and 8, Regulation I. 1811, relative to the offence of purchasing or receiving property obtained by Theft or Robbery, with a knowledge of its having been so obtained, "will be duly considered by Government in framing the Regulation which it is intended should be enacted on those subjects."—In a subsequent part of the same letter from the Secretary in the Judicial Department, replying to the Court's remarks under date the 21st August, 1816, on a Report from the Senior Judge of the Calcutta Court of Circuit, (dated 28th February, 1816,) it was stated that, "the general observations which Mr. Wintle has made, in support of his recommendation, that the powers of the Magistrates be extended, so as to enable them to punish, on conviction, many of the offences now brought before the Courts of Circuit, appear to the Governor General in Council extremely judicious; and in concurrence with the sentiments expressed by the Nizamut Adawlut on this subject, the Governor General in Council proposes to insert the necessary provisions for that purpose in the Regulation which it is intended to frame, for modifying the penalties at present prescribed for the offence of Burglary.

205. On a general reconsideration of the subject, with the papers now before us, we are of opinion, that the object of relieving the Courts of Circuit from a part of their

* Resolutions on a Report from Mr. Watson, 4th Judge of the Calcutta Court of Circuit, dated the 28th September, 1815.

their present heavy duty, at the periodical Jail deliveries, might be combined with a partial remedy for the evils and inconveniences attending the present, administration of Criminal Justice, noticed by the Honorable Court of Directors, by an arrangement, conformable, in part, to that proposed by the Honorable Court, and at the same time calculated to guard against any possible misapplication of the augmented powers of the Magistrates, by any undue bias towards the conviction of persons charged with the perpetration of crimes in their respective Jurisdictions.

206. It is suggested by the Court of Directors, * that, "In cases of a certain magnitude the Sentence (of the local Criminal Judge,) might undergo the revision of the Court of Circuit as it now does, under similar circumstances, with regard to the Sentences of the latter Court, which are subject to the revision of the Nizamut Adawlut." If this principle be approved, (and we are not aware that it is open to any essential objection,) the Zillah and City Magistrates, in addition to the powers now vested in them, under Section 19, Regulation IX. 1807, and other Regulations in force, might be empowered to try, and decide in the first instance, all cases of a Criminal nature not specifically reserved for trial before the Courts of Circuit; and not subjecting the offenders, on conviction, to a Sentence of imprisonment exceeding the term of seven years; or such other period as it may be judged proper to fix; under the following restrictions.

First. That in all cases wherein the Magistrate may adjudge a prisoner to be convicted, and to suffer punishment beyond the limitations prescribed in Section 19, Regulation IX. 1807, (or, more generally, in which a prisoner may be liable, under the Magistrate's sentence, to confinement beyond the term of one year,) he shall, as soon as practicable, transmit his proceedings on the trial and all material papers connected therewith, duly authenticated by his signature, to the Court of Circuit of the Division; accompanied with a letter containing any remarks which he may consider necessary for the information of the Court of Circuit, in addition to the record of his proceedings. *Secondly.* That the Magistrate's Sentence, in trials so referred to the Courts of Circuit, so far as it may include stripes, or any other punishment, except that of imprisonment, be not carried into execution, till the receipt of a confirmation of the Sentence by the Court of Circuit. *Thirdly,* that as far as circumstances may admit, it shall be the duty of the Judge of Circuit at the Sudder Station, who is to hold the ensuing Jail delivery of the Zillah or City from which the trial may be referred, immediately, on the receipt of the Magistrates' proceedings, to peruse and examine them in concert with one of the Mahomedan Law Officers of the Court of Circuit; and, after taking a Futwa from the Law Officer, declaring the conviction of the prisoner, or otherwise, to state, in a distinct Roobakaree, or proceeding,

* In para. 167, of their letter, dated 9th November, 1814.

ceeding, his own judgment on the case; both as to the sufficiency of the evidence for convicting the prisoner and, if convicted, the measure of punishment which should be adjudged against him, under the Laws and Regulations in force, on due consideration of all the circumstances of the case. *Fourthly.* If the Judge of Circuit, revising the trial, differ in opinion from the Law Officer of that Court, with respect to the conviction of the prisoner, and shall not consider it necessary to postpone a final Sentence, in the case, for further evidence; he should transmit, without delay, the whole of the proceedings in the case, with the Futwa of the Law Officers, and the letter stating his own opinion, to the Court of Nizamut Adawlut, as required by the existing Regulations in all cases wherein a Judge of Circuit may see cause to disapprove the Futwa of a Law Officer sitting with him on a Criminal trial. But if the Judge of Circuit concur in the Futwa given by the Law Officer, and no further evidence appear requisite; the Judge of Circuit should issue his warrant to the Magistrate (at the same time returning the latter's proceedings;) and the Magistrate should be required to conform to the warrant so issued, whether it correspond with his own preliminary Sentence in the case, or otherwise. *Fifthly.* If the Judge of Circuit, revising the Magistrate's proceedings in the case, see cause for taking further evidence, he should, without passing Sentence, return the Magistrate's proceedings, and furnish him with such instructions as may be necessary for causing the attendance of the requisite witnesses at the ensuing Session of Jail delivery.

207. If an arrangement to the above effect were adopted, we should further suggest, that persons appearing, from the Magistrate's inquiry, to have been guilty as principals, or accomplices of any of the following specific crimes, as well as persons guilty of any other offence which, under the Laws and Regulations in force, may be punishable by imprisonment exceeding the term of Seven years, should be excepted from the Magistrate's Judicial authority, and brought to trial, as heretofore, before the Court of Circuit.

1st. Murder, or any manifest attempt to commit deliberate and wilful Murder, by wounding, burning, strangling, poisoning, drowning, throwing into a well, or other means.

2d. Culpable Homicide, when the prisoner may be clearly convicted of having occasioned the death of the deceased by some unlawful act; though it may not appear to establish the crime of wilful Murder.

3d. Gang Robbery or highway robbery, though not committed by a gang, and every species of robbery by violence.

4th. Aggravated cases of Burglary, House-breaking or Theft, or of an attempt to commit either of these offences, when accompanied by wounding, burning, or other serious corporal injury, so as to bring the case within the provisions of the fourth or fifth Clause of Section VIII. Regulation XVII. 1817.

5th. Rape, when actual violence may be established and the case may consequently be referrible to the Nizamut Adawlut under the third Clause of Section VI. Regulation XVII. 1817.

6th. Aggravated cases of Forgery, punishable with more than seven years imprisonment, under the second Clause of Section IX. Regulation XVII. 1817.

208. In proposing to except culpable Homicide, not amounting to wilful Murder, from the Judicial cognizance of the Magistrate, we have been influenced by an opinion, that all cases of unlawful Homicide, in which there may be sufficient evidence for conviction, should be brought in the usual course, before the Superior Criminal Courts; who will determine whether the facts and circumstances of the case come within the legal definition and penalty of Murder, or otherwise.—It does not appear necessary to offer any particular explanation of the other exceptions above noticed; except that they have a general reference to the penal Laws and Regulations in force, especially the provisions recently enacted in Regulation XVII. 1817.

209. Notwithstanding these exceptions, there can be no doubt that the business of the Courts of Circuit, at the periodical Jail deliveries, would be materially diminished, whilst at the same time the revision of a Judge and Law Officer, at the Sudder station, would sufficiently maintain the benefits now derived from a trial before those Courts in the cases referred to.—The proposed mode of trial would likewise, in general, save the necessity of a second attendance of Witnesses; with the consequent inconvenience and expense; and by bringing the defence of the prisoner, as well as the charge against him, to a speedy investigation and decision, would prevent, in a great degree, the opportunities for fabricating defences and perjured testimony, which have been noticed as part of the evil consequences resulting from the present mode of procedure.—The length of time, which now elapses between the apprehension of an offender, and his punishment by sentence of the Court of Circuit, would also be much shortened, in most of the cases within the Judicial cognizance of the Magistrate; and thus, what is stated to be an evil of very considerable magnitude under the existing system, would be removed as far as practicable.—It should be added, that where the evidence against the prisoner is not sufficient for his conviction, he will obtain an earlier discharge by the means proposed. than if he were kept in confinement to wait, the regular Session of Jail delivery.

210. The principal objections which occur to us against the mode of proceeding proposed to be substituted for that now established, are—*First.* That the Judges of Circuit, who are to pass the final sentence in cases revised by them, will be deprived of the advantages arising from a personal examination of the witnesses.—*Secondly.* That the prisoners will also be deprived of such advantages, and of the further benefit attending a comparison of the first examination of witnesses before the Magistrate with their second examination before the Court of Circuit. *Thirdly.* From the multiplicity of business which the Magistrates and their assistants, have to perform, it may be questioned whether the depositions of witnesses would be always taken with that deliberation and care, which are requisite on a Criminal trial, the result of which may be highly penal and distressful to the accused.

211. It must be admitted, that the above objections are serious and important: but, with an express provision that the examinations of witnesses, in the cases referred to, should be taken in the presence of the prisoner by the Magistrate in person, or, when circumstances may prevent this, by his Assistant, and that they be invariably certified as so taken by the Magistrate or his Assistant; we do not apprehend that the Judicial powers, which we have proposed to vest in the Magistrates, for the ends of justice, would, or could, be perverted to the oppression of innocence; or in any respect prevent a full and impartial trial.—At all events, whatever real objections may attach to an exercise of Judicial powers by the Magistrates, subject to a formal and necessary revision by the Courts of Circuit, will apply still more strongly to any extension of the Magistrate's Judicial authority, without such revision.

212. It may be said that the evils and inconveniencies to parties and witnesses, attending the present course of proceeding in Criminal trials for heinous offences, will still attach to a considerable number of cases, which, as heretofore, will be examined in the first instance, by the Magistrates; and, after a long interval, be again brought forward for trial, at the periodical Sessions of the Courts of Circuit.—We must admit this statement, and have already observed, that some continuance of the evils referred to appears to be unavoidable, under the established system of Criminal Judicature.—We can only suggest the following provisions, as calculated, in some measure, to extenuate, what cannot be completely remedied, in cases which, on general principles, cannot be rendered judicially cognizable by the Magistrates; and must therefore be brought to a regular trial, before the Courts of Circuit, when there may be sufficient grounds for a commitment to those Courts.

213. The general rule for commitments prescribed in Section V. Regulation IX. 1793, and Section V. Regulation VI. 1803, requires the Zillah and City Magistrates on the investigation of Criminal charges, within the cognizance of the Courts of Cir-

cuit, to commit the prisoner, or hold him to bail, for trial before the Court of Circuit, "if it shall appear to the Magistrate that the crime or misdemeanor was actually committed, and that there are grounds for *suspecting* the prisoner to have been concerned in the perpetration of it."

214. In the resolutions of the Nizamut Adawlut, on a report from the Fourth Judge of the Calcutta Court of Circuit, submitted to Government under date the 21st August, 1816, (paragraph 8,) it was observed that, "under the operation of this rule it must be expected that persons committed by the Magistrate, on grounds of suspicion, will be frequently acquitted by the Court of Circuit, from want of sufficient evidence for conviction; and this can be obviated only by requiring the Magistrates to make a full inquiry into all the charges preferred to them; with authority to discharge the prisoner, if there shall not appear to be legal proof, or strong ground of presumption against him, such as may be judged sufficient for his conviction before the Court of Circuit."

215. It may be further observed that, in the large proportion of Criminal trials before the Courts of Circuit, wherein the prisoners are necessarily acquitted from want of evidence for their conviction, the serious inconvenience to witnesses, from a second attendance before the Court of Circuit, is much more extensive, than it would be, if the Magistrate, on a full investigation of the case (including the prisoner's defence and evidence in refutation of the charge, as well as the whole of the evidence in support of it, (or even the latter only, if it be thought objectionable to compel the prisoner to disclose the witnesses to his defence before he is put upon his final trial,) were authorized and directed, in qualification of the rule now in force, not to commit the prisoner, or hold him to bail, for trial before the Court of Circuit, unless, on consideration of the whole of the evidence and circumstances of the case, there appears to be sufficient proof, or presumption of the prisoner's guilt, to warrant his being brought to trial before the Court of Circuit. If the Magistrate, after taking all the evidence obtainable on the case (or the whole adduced in support of the charge, if it be not thought proper to require the prisoner to enter upon his defence before the Magistrate,) should be of opinion, that there is not such proof or presumption, he should discharge the prisoner, with or without security, according to the circumstances of the case, and the rules in force upon this subject. The Magistrate might, at the same time, be directed to record the grounds of the order passed by him, for the information of the Judge of Circuit, to whom his proceedings would be submitted, with the Calendar of persons discharged by him at the ensuing Session: and if, in any instance, the Judge of Circuit, on inspection of the Magistrate's proceedings, should be of opinion that a prisoner, discharged by the Magistrate, ought to have been brought to trial before the Court of Circuit, or

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that a further investigation of the case before the Magistrate is requisite for the ends of justice, he might be authorized, in the former case, to direct that the prisoner be brought to trial at the following Session of the Court of Circuit; or in the latter case, that a further enquiry be made by the Magistrate, and the result communicated to the Judges of Circuit at the Sudder Station, for their instructions; in pursuance of the rule prescribed for such cases in Section XXII. Regulation IX. 1807.

216. We have adverted to a possible objection against a full investigation of the case before the Magistrate, as it respects the defence of the prisoner. The rule above cited from Regulations IX. 1793, and VI. 1803, directs that "upon the prisoner being brought before the Magistrate, he should enquire into the circumstances of the charge; and examine the prisoner, and the complainant; and also such other persons as are stated to have any knowledge of the crime, or misdemeanor alleged against the prisoner; and commit their respective depositions to writing.—The complainant and the witnesses shall be examined upon oath, but the prisoner shall not be required to swear to the truth of his deposition." These terms do not contain any express provision for enquiring into the truth of the prisoner's defence before the Magistrate; and in Section XII. Regulation IX. 1793, as well as in Section XII. Regulation VI. 1803, it is directed that "the Magistrates, previous to the arrival of the Courts of Circuit at their respective stations, shall ascertain from the persons committed or held to bail to take their trial, the names and places of abode, of any witness or witnesses, they may wish to have examined in their defence; and shall issue the customary process to cause such witnesses to attend at the time fixed for the trial of the persons in whose behalf they may be summoned."—In addition to the above rule it is further provided by Section II. Regulation IX. 1796, and Section XXXII. Regulation VI. 1803, that—"In all cases of a prisoner being committed, or held to bail for trial before any Court of Circuit; the Magistrate who may order him to be so committed or held to bail shall, immediately after passing such order, question the prisoner whether he wishes to have any witness or witnesses examined in his defence before the Court of Circuit; and in the event of his answering in the affirmative, shall cause a list of the witnesses named by the prisoner, specifying their designations and places of abode, to be taken down and recorded, upon his proceedings; or in the event of the prisoner's replying in the negative, shall cause his reply to that effect to be recorded on his proceedings for the information of the Court of Circuit."

217. It may be said that prisoners committed for trial before the Courts of Circuit will be deprived in a great degree of the benefits intended by the above provisions in their behalf, if they are required to disclose the names of the whole of their witnesses, and to enter fully on their defence before the Magistrates; that the parties accused being in close custody, whilst their accusers are at liberty, the latter,

ter, if apprized of the points of defence, and of the witnesses named to prove them, might exert their influence, or use other means, to prevent the witnesses of prisoners from giving their faithful testimony, before the Magistrate in the first instance, or ultimately before the Court of Circuit; and therefore, admitting some inconvenience to individuals, as well as expense to Government, to attend the liberty now allowed to persons accused of heinous offences, both in postponing their defence, and naming their witnesses in support of it, till put upon their trial, before the Court of Circuit, justice and humanity require that the existing rules of proceeding, applicable to such cases, should not be altered, beyond what may be necessary to correct experienced abuses.

218. On the other hand, it may be fairly argued, that a full investigation of the case including the prisoner's defence before the Magistrate, might often prevent his commitment for trial before the Court of Circuit:—that if a Prisoner have any real defence to offer, in refutation of the charge against him, the sooner it is brought forward, and the witnesses to it, are examined, the greater probability there is of its being established: that witnesses, whose depositions have been taken by the Magistrate could not, for obvious reasons, be easily persuaded, or induced, to give opposite testimony before the Courts of Circuit; and that the delay, which usually takes place between the Magistrate's commitment and the trial before the Court of Circuit, with the unlimited means now afforded to name and summon witnesses on any point, and at any time previous to the final trial, however favorable to Prisoners, have been found not merely oppressive to numerous individuals, unnecessarily named as witnesses; and also productive of a considerable public charge for diet money; but moreover repugnant to the ends of justice; and (to use the words of the Honorable Court of Directors,) "highly prejudicial to the morals of the people, and to the due administration of justice, by the opportunities which it affords for imposing on the Courts by fabricated defences and perjured testimony."

219. In a letter addressed to Government by Mr. Shakespear, Superintendent of Police in the Western Provinces, on the 30th of March, 1814, (and referred to the Nizamut Adawlut on the 13th May following) this subject was noticed by him in the following terms.—"The difficulty which the Magistrates experience in prosecuting offenders to conviction before the Court of Circuit, is in no small degree augmented by a practice which obtains in all the Courts I have visited, of merely summoning the witnesses named by the Prisoners, to attend on the trial before the Court of Circuit, without examining these persons before the commitment is closed; and the Magistrate is instructed by the Regulations to summon any number of Witnesses desired by the prisoner for his defence, at any time antecedent

tecedent to the trial before the Court of Circuit. It need not be a matter of surprise that numbers of *Alibis* are established by witnesses, who, had they been summoned and examined by the Magistrate in the first instance, would in all probability have denied any knowledge of the circumstances to which they are required by the prisoner to depose. By the present practice an opportunity is afforded the prisoner during several months, between the date of commitment and the date of trial, to ascertain from his fellow prisoners the proper persons to name to the Magistrate, and to employ his friends in tutoring these witnesses to confirm the defence which he may have set up, and it is the undoubted practice in many cases for offenders to name their associates as witnesses; who, though fearful of attending before the Magistrate, have no such apprehension when the trial comes on before the Court of Circuit. This evil might easily be remedied, by instructing the Magistrates to examine the prisoner's witnesses before the commitment, and if the prisoner, instead of being allowed to name any number of witnesses at any period before the time of trial, was obliged to name the witnesses to his defence before his case was committed to the Court of Circuit, much abuse would be checked without affecting the impartial investigation of the case; as the Judge of Circuit might, on the trial, if the prisoner urged substantial reasons, require further evidence on his behalf."

220. In a further letter from Mr. Shakespear, dated 30th June, 1817, (and referred to this Court on the 19th August last) he observes that, "An extraordinary proportion of offenders, particularly burglars, has been prosecuted to conviction during the last year, by the Magistrate of Allyghur. Mr. Marjoribanks ascribes his success, in this respect, chiefly to the circumstance of his completing the evidence for the defence in each case, as well as for the prosecution, prior to his making his commitments to the Court of Circuit."

221. On the whole, we have no doubt that the conviction of real offenders, in all Criminal cases, would be materially promoted by a full and immediate investigation before the Magistrates; and we see no sufficient reason to apprehend that in cases wherein the Magistrates may consider the evidence against persons charged with heinous offences, sufficient to warrant their commitment for trial before the Court of Circuit, a previous disclosure of their defence before the Magistrate, and naming their Witnesses in proof of it, (provided the examinations of such witnesses be immediately taken by the Magistrate) would deprive them of any just means of establishing their ultimate defence on trial before the Court of Circuit.

222. The only apprehension we entertain, under actual circumstances is, that some of the Zillah and City Magistrates would not be able to devote a sufficient portion of their time to the full investigation of Criminal Charges, as suggested, without neglecting the duties of their Civil Courts.—In such cases, however, expedients might be adopted, without any great increase of expense, by the appointment of Assistant Magistrates, or Assistant Judges; or persons uniting both these capacities; or the offices of Zillah Judge and Magistrate might be vested in different persons, as suggested in paragraph 169 of this report. We do not therefore consider the practical and partial difficulty, here adverted to, an insuperable obstacle to the adoption of the measure proposed; if the principle of it be approved by Government: and it be deemed a proper remedy for supplying part of the defects which have been pointed out in the existing provisions for the administration of Criminal Justice.

223. At all events, it appears necessary to modify the rules now in force, whereby prisoners committed, or held to bail, for trial before the Courts of Circuit, are enabled to cause the attendance of any number of witnesses, whom they may name in their defence; an abuse of this unlimited discretion having been found productive of serious inconvenience and loss to large numbers of persons, whose evidence has ultimately proved of no consequence to the issue of the trial on which they were summoned. On this subject, in addition to what has been quoted from Mr. Shakespear's letter of the 30th March, 1814, it appears sufficient to refer to the remarks contained in paragraph 36 to 41 of the Resolutions of the Nizamut Adawlut, on a Report from the second Judge of the Moorshedabad Court of Circuit, submitted to Government under date the 11th of January 1816; and acknowledged in a letter from the Secretary in the Judicial Department, dated 15th March, 1816; with a communication of the opinion of the Governor General in Council, "That a modification of the rules in force, for summoning witnesses named by a prisoner, (the practical operation of which appears to have been attended with great abuses and inconvenience) is highly expedient and necessary;"—It was added that "his Lordship in Council will accordingly be prepared to take into his consideration the draught of the Regulation which the Court propose to submit to Government on this subject."—But although some provisions for this purpose have been prepared by our Chief Judge in the form of a Regulation, it has not been thought proper to submit them for the approval of Government; until it be determined whether the Magistrate's enquiry in cases ultimately cognizable by the Courts of Circuit, shall extend to a full investigation of the case, or otherwise.

224. We shall, at present, subjoin only the following suggestions for consideration. *First*, That no witnesses to general character be summoned to attend the Court of

of Circuit, without the orders of that Court, who will judge whether the attendance of witnesses of this description be requisite, or otherwise. *Secondly*, That, of the witnesses examined by the Magistrate, either in support of the charge or in defence of the prisoner, such only whose evidence may appear relevant, and in some degree material to the final issue of the case, shall be bound over, by recognizance, to attend the Court of Circuit.—The Magistrates at the same time to be strictly enjoined not to omit any material witness on the part of the prosecutor, or prisoner.—*Thirdly*, The Judge of Circuit to be at liberty to call for any other witnesses, whose testimony may appear requisite for the ends of justice;—but to be cautious in admitting, without sufficient cause assigned, any witnesses who may not have been previously named in the enquiry before the Magistrate; particularly if their testimony be desired to prove an *Alibi*, or other plea, not stated before the Magistrate.

225. The suggestion contained in the 168th paragraph of the Honorable Court's letter (viz.—"At the principal cities, it may be necessary as it was in the year 1787, to continue the functions of Judge and Magistrate in the same person; but with the same extended power as is proposed to be given to the Zillah Judges,") does not appear to call for separate consideration; after what has been stated on the general question of transferring the office of Magistrate to the Collectors.

226. On the 5th and 6th propositions under the head of Criminal Justice, detailed in the 10th Paragraph of this Report, it is sufficient to refer to the draught of "a Regulation for the guidance of the Magistrates and Criminal Courts in requiring security for keeping the peace, or general good behaviour, and for regulating the detention in custody of persons not giving such security when required;" which was submitted to Government on the 16th February 1816, with a Minute from our Chief Judge, dated the 18th December 1815, and other papers. On the 11th June last a statement of persons in actual confinement under requisition of security, specifying certain particulars not found in the periodical reports, was required by the Governor General in Council, with a view to enable Government to judge of the expediency of the rules, suggested in the Regulation abovementioned. This statement will be furnished, as soon as the whole of the reports of the Magistrates from which it must be compiled shall have been received.* In the mean time it may be remarked that Section XX. of the Regulation abovementioned, contains a provision, corresponding in substance with that recommended by the Hon'ble Court of Directors,† in the following terms. "Whenever a person required to find security for his future good behaviour or honest livelihood, under any part of the provisions of this Regulation, shall be discharged without giving such security; or when eve

* It has been submitted to Government since the draught of this report was prepared.

† In paragraphs 178 and 280 of their general letter, dated the 9th November, 1814.

ever a prisoner convicted of any Criminal offence, and sentenced to temporary imprisonment, shall be released at the expiration of his sentence without security: if the Magistrate deem it expedient, with reference to the character of the prisoner so discharged, to keep a watch over his future conduct, he shall apprize the Village Watchmen, as well as some of the principal inhabitants of the Village to which the person may belong; with an injunction, to afford him all practicable aid in obtaining an honest maintenance; but to keep a vigilant inspection over his conduct and mode of living; and to give timely information to the Police Officer of the jurisdiction, in case he should associate with persons of bad repute; absent himself without cause from his village at night; cease to labour or to pursue any ostensible means of livelihood; or appear to be concerned in any Criminal practice."

227. We may further remark, in this place, that a rule for guarding against unnecessary delay, in bringing to trial before the Courts of Circuit persons confined by the Magistrates during the investigation of Criminal charges cognizable by those Courts, was proposed, in the 16th Paragraph of the Resolutions of the Nizamut Adawlut under date the 21st August 1816, on a Report from the 4th Judge of the Calcutta Court of Circuit; and was approved by Government on the 7th February, 1817. The clauses which have been prepared, in consequence, to be included in a future Regulation, are as follow.

First. " In addition to the Calendars which the Magistrates are now required to lay before the Judges of Circuit at the periodical Jail deliveries, they shall submit to the Judges of Circuit at the commencement of each Jail delivery, a Calendar of persons in confinement on Criminal charges still under examination, containing the following particulars, viz. the name of each Prisoner; the date of his apprehension; the charge against him; by whom preferred; and what proceedings have been held in the case; with an explanation of the cause of delay in passing a final order, if the prisoner have been more than a month in confinement. The Judge of Circuit, on inspection of this Calendar, will call for the Magistrate's proceedings in any case that may appear to require it; and if, on perusal of them, he shall be of opinion that there is not sufficient reason for postponing the trial, he is empowered to instruct the Magistrate to close his proceedings, and either to pass a final order, if the case be determinable by the Magistrate, or to bring it before the Court of Circuit in a Supplementary Calendar, if there appear to be sufficient ground for committing the prisoner to stand his trial before that Court."

Second. " In exercising the power vested in the Judges of Circuit, by the above clause, for the purpose of preventing the long confinement of Prisoners charged with criminal offences, during the Magistrate's investigation of such charges, without

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strong and sufficient cause for their detention, the Judges of Circuit are required to give due attention to the reasons assigned by the Magistrates for not passing a final order respecting the prisoner, or prisoners, in each instance, and to be careful that their instructions to the Magistrates in such cases are consistent with the objects of Public justice, as well as with a just and humane consideration of the prisoner's actual condition, and the period of his confinement."

228. In the 183d paragraph of the letter from the Honorable Court of Directors, which is the subject of our present report, it is desired, "that an inquiry should be instituted into the existing Regulations and forms, in both the Departments of Police and Criminal justice, with a view to the revision of the same, so as to combine as far as may be possible, the expeditious and effectual dispatch of business, with regularity and correctness of proceeding."

229. This has been already done in the Police department, and the result is contained in the several rules and provisions of Regulation XX. 1817, before referred to.

230. The Superintendent of Police for the Western Provinces, has likewise been instructed * to prepare, and submit through this Court, for the consideration of Government, forms of the several periodical Reports, to be hereafter furnished by the Magistrates to the Courts of Circuit or Nizamut Adawlut, founded on the principle of rendering them as simple as may be consistent with the object for which each Report is required, and accompanied with the draught of a Regulation for discontinuing the Reports prescribed by the Regulations now in force, or such of them as may not be considered requisite in future.

231. On consideration of a further suggestion from the Superintendent of Police (Mr. Shakespear) † for abridging the proceedings of the Magistrates and their Assistants, in the examination of prosecutors and witnesses, the Court of Nizamut Adawlut, in their Resolutions of the 28th August last, recommended as follows;—*First*, That in the examinations of prosecutors and witnesses, taken by the Magistrates and their Assistants, (but not in the examinations of prisoners,) they shall be authorized to omit the questions when the insertion of them may not appear requisite, and to

* Paragraph 56 of letter from Secretary to Government in Judicial Department to the Superintendent of Police, dated 30th August, 1816, and para. 7 of Resolutions of Nizamut Adawlut, under date 28th August 1817

† In Para. 32 of his Police Report for the lower Provinces, dated 30th March, 1814

to record the answers only* *Secondly*, That in trials before the Magistrates for petty offences, such as those described in Section VIII. Regulation IX. 1793, and Section VIII. Regulation VI. 1803, and punishable on conviction under Section XX. Regulation IX. 1807, by imprisonment, or fine, commutable to imprisonment, not exceeding one month, when all the witnesses on the part of the prosecutor, or if the prisoner may be in attendance (but not otherwise,) it shall be competent to the Magistrate, instead of taking down the depositions of the witnesses at length, and on separate papers, as required by Section XV. Regulation IX. 1793 and Section XV. Regulation VI. 1803, to record the substance of their evidence only in his proceedings, with the orders passed thereon. †

232. In Mr. Secretary Bayley's letter of the 30th September last, the Court were informed of the concurrence of the Honorable the Vice-President in Council in their sentiments and suggestions, with regard to the proposed abridgement of the proceedings of the Magistrates and their Assistants, in the examination of prosecutors and witnesses; and that Mr. Shakespear would be instructed to include the necessary provisions in the draught of the Regulation, which he had been previously desired to submit to the Nizamut Adawlut, regarding the forms of periodical reports.

233. We are not aware that any other general rules of proceeding, or process in the department of Criminal justice, are at present called for, excepting such as will naturally form part of any new Regulations which may be enacted, for altering and defining the powers and duties of the Magistrates and Courts of Circuit, or generally of the established Criminal Courts.

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* This proposition was more fully expressed in the draught of a Regulation prepared by our Chief Judge, (but which the orders of Government mentioned in the next para. have rendered it unnecessary to submit at present) in the following clauses

"*First*, With a view to save the time of the Magistrates and their Assistants, in taking the depositions of prosecutors and witnesses who may be examined by themselves and not by a Native Officer, they are authorized, instead of recording at length the whole of the questions put to the Prosecutor, or witnesses, as well as the answers given to record the answers of the persons examined, with such of the questions only as may appear requisite, in each instance, to explain the deposition, and render it clearly intelligible."

"*Second*, The above provision shall not be considered applicable to the examinations of prisoners; nor to the depositions of prosecutors or witnesses which may be taken by a Native Officer"

† The following clauses on the subject of this proposition, were likewise included in the draught above noticed "First, In trials before the zillah and City Magistrates, Joint Magistrates and Assistant Magistrates for petty offences, such as those described in Section VIII. Regulation IX. 1793, and Section VIII Regulation VI 1803, which on conviction are punishable under Section XX. Regulation IX. 1807, by imprisonment, or a fine commutable to imprisonment not exceeding one month, when all the witnesses on the part of the prosecutor or of the prisoner may be in attendance, it shall be competent to the Magistrate, Joint Magistrate or Assistant Magistrate, instead of taking down the depositions of the witnesses at length and on separate papers as required by Section XV. Regulation IX. 1793, and Section XV. Regulation VI. 1803, to record the substance of their evidence only on his proceedings, with the orders passed thereupon. Second. It is not intended that the discretion vested in the Zillah and City Magistrate and joint or Assistant Magistrate by the above clause, shall be exercised by the Assistants to Magistrates who may not have been empowered to act as Joint or Assistant Magistrates."

234. The only remaining suggestion from the Honorable Court of Directors, on which we have to offer our sentiments, is that contained in the two concluding paragraphs of their general letter, dated the 9th November, 1814, relative to the form of protestation which witnesses are required to observe in giving evidence in our Courts of Judicature. After citing a report from Mr. Edward Strachey, dated the 1st September, 1807, in which he had observed "that such is the terror of the oath, that no respectable person will appear in our Courts as a witness if he can help it; that his own experience enabled him to say, it was common for families, sometimes whole villages, to flee at the apprehension of being named as witnesses; that the people at large do certainly consider the taking of an oath by the Ganges water to be a spiritual offence of the most horrid nature; and that if the corporal oath now used tend to banish truth from our Courts, and be liable to the objections stated, he knew no reason why it should not be abolished altogether."— The Honorable Court add, "we wish you to ascertain how far this essential consideration is attended to, by our Judicial Officers, and if the Regulations of your Code of Justice should be defective or erroneous in this respect, the requisite amendments should be made therein; so as that the testimony of those cited before our regular tribunals, of whatever gradation, should be given in that mode most consentaneous with their ideas and prejudices, as well as most likely to be binding on their consciences."

235. The late Judge and Magistrate of Zillah Rajshahye, in his letter, dated the 25th January, 1816, (paragraph 135 to 138) has offered the following remarks upon this subject.

"I am not aware that the rules contained in Regulations IV, of 1793, and L, of 1803, for the administration of oaths, require any modification or amendment. I do not imagine that the people at large do certainly consider the taking of an oath by the Ganges water to be a spiritual offence of the most horrid nature, nor can I conceive how the oath, in the form now used, can tend to "banish truth from our Courts," as quoted from Mr. Edward Strachey's letter, in the 184th paragraph of the Honorable Court's letter. It is stated in the preamble to Regulation L, of 1803, on the opinion of the Pundits of the Sudder Dewanny Adawlut, "that the Hindoo law not only authorizes, but requires, the oaths of witnesses in Civil and Criminal cases;" and I see no reason why we should, by abolishing them, give unnecessary encouragement to a prejudice, which is not sanctioned by the laws of the people, but originates in the weakness and bigotry of their minds and education. Not ten in a thousand of the witnesses and plaintiffs, who come into our Courts, make any objections to taking the oath, and those who are of a rank and caste to whom the provisions of the above cited Regulation apply, are perfectly aware that they will be exempted from it, on their subscribing the declaration therein

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prescribed. That persons of respectability are averse to attending our Courts as witnesses, where little attention is paid to distinctions of rank, and where they are liable to be confronted with persons of the lowest caste, and examined and cross-examined by the Native Pleaders, is not to be wondered at: but this is a necessary state of things; and would apply equally, whether they were called on to confirm the truth of their despositions by the solemnity of an oath, or not."

236. We do not understand the suggestion of the Honorable Court of Directors, to extend to the general abolition of oaths in the delivery of testimony before the established Courts of Judicature, and under the ascertained provisions of the Hindoo and Mahomedan laws, as detailed in the preamble to Regulation I, 1803, as well as under the rules prescribed in that and other Regulations for the guidance of the Civil and Criminal Courts, in administering to parties and witnesses such oaths as may be considered most binding on their consciences, according to their respective religious persuasions, or dispensing with the oaths of persons whose rank and condition are really such as under the existing prejudice, would render it improper to compel them to take an oath; the total discontinuance of oaths, when required for the validity of evidence, and due administration of justice, does not appear to us to be necessary or proper. It is, we think, sufficient, that with a view to maintain the sanctity and obligation of an oath by confining the requisition of it to judicial and other cases, wherein it is required to verify evidence, the rules lately enacted in Regulation XVIII, 1817, have substituted a solemn declaration for the oath of office before prescribed, to be taken by the Native Officers employed in the Judicial, Revenue and Commercial Departments, or any other public office whatever; by the Native pleaders attached to the Civil Courts; and by the Moonsiffs and Sudder Aumeens.

237. The only questions for consideration appear to be, whether the form of oath now in use, with respect to Mahomedans and Hindoos respectively, be defective and capable of amendment; whether there be any want of regularity, or due solemnity in the usual mode of administering oaths, and generally, whether any and what means can be adopted to render the oaths administered to parties and witnesses more efficient in preventing the prevalent offence of Perjury.

238. This subject was brought under the consideration of the Sudder Dewanny Adawlut by the Extract of a letter from the Superintendent of Police in the Lower Provinces (Mr. J. Shakespear,) dated the 30th March 1814, which was referred by Government to this Court on the 13th May following, with instructions to report, "on due consideration of Mr. Shakespear's observations, whether they would recommend any modification of the existing rules for administering oaths to witnesses, both in

Civil

Civil and Criminal cases." The observations here referred to were to the following effect.

"The laxity of morals, and the little consideration paid by the Natives of this Country to the sacred obligation of an oath, has frequently been brought under the consideration of Government, and notwithstanding the attention paid by the legislature to this subject, it is certain that the crime of Perjury was never more prevalent than at the present day. The Civil and Criminal Courts teem with false evidence, and though the Judges and Magistrates seldom investigate a cause in which they have not reason to believe that the witnesses, on one or both sides, are perjuring themselves, yet in consequence of the difficulties experienced in proving the offence of Perjury, the instances of offenders being prosecuted to conviction are extremely rare. The Judges of Circuit cannot, by the existing Regulations, pass a milder sentence on a person convicted of Perjury or subornation of Perjury, than 39 stripes of the Corah, 4 years imprisonment, with hard labour; *Tusheer*, or public exposure on a Jack-Ass; and the process of *Godna*, which marks for life the infamy of the offender on his forehead. There are gradations of this, as there are of all other offences; and there appears reason to apprehend, that the great severity of the Law has defeated the end in view, since prevarication, and all the stages of Perjury, now pass unpunished; and the very few examples, which are made, afford a calculation of impunity to false witnesses, amounting almost to a certainty. On the other hand, the indiscriminate punishment of the offence might render respectable men fearful of giving evidence in our Courts. The solemn admonition, with which the oath is directed to be administered, is not, I apprehend, sufficiently attended to: and the oath itself is not, I conceive, of so obligatory a nature, in some respects, as it might be made. The Koranee Moollahs, and Gunga Jullies, receive a salary of about five Rupees per mensem, and are generally ignorant, and of the lowest class of Mussulmans and Bramins. It cannot be expected that such men should administer the oath impressively; and indeed it is not an uncommon practice for them to swear several witnesses at the same time, with a single Koran or copper vessel. Mussulmans are not unfrequently allowed to stand in their shoes, with the Koran in their hands; whereas they ought to stand barefooted; with the Book placed upon their head. At many Stations, situated at a distance from that part of the Ganges River which is considered sacred, little attention, I fear, is paid to the water used in administering oaths. These points, though apparently trivial, become of no small consideration to a witness desirous of compromising with his Gods, or with his conscience, by any subterfuge, however futile."

239. On receipt of the observations abovementioned, the Court of Nizamut Adawlut under date the 9th June 1814 directed their Register to communicate the purport of them to the Mahommedan and Hindoo Officers of the Court, for a report of their

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sentiments, "whether any and what means can be adopted to render the oaths administered to parties and witnesses in the Courts of Judicature, in conformity to Section V, Regulation L; 1803, more efficient, in preventing the prevalent offence of Perjury." Translations of the answers received from the Law Officers, in answer to this reference, we have now the honor to submit (Appendix E.) for the information of Government.

240. We have since received with the Chief Secretary's letter, dated the 5th July, 1814, the following further extract of a report from Mr. Blunt in his capacity of Superintendant of Police in the Western Provinces under date the 31st May, 1814.

"The crimes of Perjury and subornation of Perjury would appear to prevail to fully as great an extent in the Civil and Criminal Courts of the Western, as of the Eastern Provinces. These crimes are not noticed in the statement, because the number of convictions, or commitments, cannot lead to any judgement of the extent to which these offences prevail. If I might offer an opinion, founded on my own enquiries or observation, I should have no hesitation in saying, these offences have become much more prevalent since the enaction of Regulation II, 1807. The increased severity and uniform measure of punishment which leaves not the exercise of any discretion with the Judge in apportioning the punishment to the degree of criminality, has rendered convictions by the Courts of Circuit so rare, notwithstanding the number of commitments which have been made by the Magistrates, that many of the latter have now almost ceased to commit, even in cases of manifest Perjury; and it seems very questionable whether the operation of the Regulation in question has not, by encouraging hopes of impunity, proved rather injurious than beneficial. Exclusive however of the cause above assigned for the increase of this offence, it appears to me that the prevalence of this evil is in a great measure to be ascribed to the manner in which (owing chiefly I apprehend to the pressure of business) evidence is often taken in the Civil and Criminal, Zillah and City Courts. In the Civil Court this duty is in general committed to the Native Amlah; and there is great reason to believe that the Vakeels or Native Pleaders, are not unfrequently instrumental to the subornation of perjured evidence. In the Criminal Courts the depositions of witnesses, in two or even more cases of importance, are sometimes taken at the same time; and sufficient care is not always taken to keep the witnesses separate; and to prevent communication between those examined and those who are to be examined; and the attention of the Magistrate being divided between several cases, on which proceedings are held at the same time, instances of Perjury easily escape notice; and depositions are given and are admitted by the Court, which are clearly unworthy of credit. The solemnity of an oath, and sense of moral turpitude in its violation, afford but a frail

dependance

dependance for the veracity of a great proportion of the persons who are called to give evidence in the Zillah and City Courts, and I would, with much deference, submit, that this offence is not to be restrained by mere penal enactments; which seem only to encrease the difficulties of convicting the offenders; but it may be deserving of consideration whether, in respect to the punishment for the offence of Perjury, which admits of such wide degrees of criminality, it may not be expedient to modify the provisions of the Regulations in force, by empowering the Courts of Circuit to apportion the measure of punishment to the circumstances of the offence and guilt of the offender. It is also I conceive of great importance to the prevention of the crime, that whenever the state of the business of the Criminal Court will admit, witnesses be examined singly by the Magistrate or by his Assistant, with due attention to the consistency or credibility of their testimony; and that proper precautions be observed in the Criminal Courts to prevent communications between witnesses unexamined, and those who may have given their evidence, or other persons frequenting the Court, who may be interested in the result of the case; but above all by such provisions as may have a tendency to discourage the subornation of Perjury in either Court. But adverting to the importance of the subject, and the detail to which it would lead in suggesting such provisions as I should consider calculated to restrain the prevalence of the offence, my sentiments on those points may perhaps with more propriety be offered in a future and separate address."

241. On consideration of the above Reports from the Superintendent of Police, and the answers of our Law Officers to the reference made to them on the 9th June 1814, we are of opinion that, after preparing, in concert with our Mahommedan and Hindoo Law Officers, the most proper form of oath to be administered to persons of each persuasion, it will be advisable to circulate the same, through the Provincial Courts, to the several Zillah and City Judges and Magistrates; with instructions calculated to secure a solemn and careful administration of oaths; as well as a strict observance of the prescribed admonition to witnesses, in conformity with the Regulations; and to obviate, as far as possible, the objectionable practices noticed by the Superintendent of Police.

242. We should have concurred with Mr. Shakespear in the expediency of vesting the Courts of Circuit with a discretion to mitigate the penalties for Perjury prescribed in Section III. Regulation II. 1807,* without reference to the Nizamut Adawlut, when the punishment therein specified, on consideration of all the circumstances of the case, and the prisoner's situation may be deemed too severe, if this object had

* The penalty of being marked on the forehead by the process of Godna is discontinued, with respect to all convicts not sentenced to imprisonment for life. by Section XII. Regulation XVII. 1817.

had not been already sufficiently provided for by the second Clause of Section IX. Regulation XVII. 1817, which authorizes the Judge of Circuit to mitigate the penalties for Perjury when he may see reason for it, "to imprisonment, with or without Tusheer, for any period not less than three years." But with regard to prevarication, not amounting to the crime of Perjury, we must repeat the following sentiments expressed by this Court under date the 12th June 1816, in the 91st paragraph of their Resolutions on a Report from the second Judge of the Bareilly Court of Circuit. "Considering the loose manner in which the Natives of India usually give their evidence, unless closely examined, and their aptness to be confused, and incoherent, without any criminal intent, if not questioned with care and temper, the Court are doubtful of the justice and expediency of declaring prevarication, without Perjury, specifically liable to punishment. It would certainly increase the repugnance which respectable persons now have to give their testimony in a Court of Judicature; and might therefore have a tendency unfavorable to the ends of justice, which would defeat its object." It may be added, that the conviction and punishment of persons guilty of wilful Perjury, will be promoted, in future, by the provisions lately enacted in Section II. to V. of Regulation XVII. 1817.

243. We shall conclude our present Report on this head with the following further extract* from the Resolutions of the Nizamut Adawlut, under date the 21st August 1816, on a letter from the Calcutta Court of Circuit.

"The Magistrates, as well as the Judges of the Civil and Criminal Courts, being empowered to admit a solemn declaration in all instances when according to the prejudice of the country, it may appear improper to compel a person to take an oath; and a general provision being made in Section V. Regulation L. 1803, for dispensing with the usual form of swearing a Hindoo party, or witness, by water of the Ganges, Copper and Toolsy, when objected to; substituting any other form of oath which may be legal and binding on the conscience of the person to be sworn; the Court see no sufficient reason for any alteration of the existing rules upon this subject."

244. In Mr. Secretary Bayley's letter of 7th February 1817, the Court were informed that as the questions discussed in a Minute recorded by our late 3d Judge, and submitted to Government on the 15th November 1815, are intimately connected with the measures suggested in the letter from the Honorable the Court of Directors, dated the 9th November 1814, his Lordship in Council desired that the Court would "offer their sentiments on Mr. Stuart's propositions on the occasion of

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Par. 65.

of their submitting the general Report which they had been directed to furnish," on the letter abovementioned.

245. These propositions, as detailed and explained in the paper of remarks accompanying Mr. Stuart's Minute, dated the 15th November 1815, appear to be in substance as follow:

First. That the districts, comprising the ceded and conquered territory in the divisions of Bareilly and Benares, "be put upon a footing which may supersede the necessity of the Courts of Circuit and Appeal; and that the Courts of Circuit and Appeal be replaced by a Nizamut Adawlut and Sudder Dewanny Adawlut, consisting of three Judges to be established in that country." Para. 33.

Secondly. "That a Resident be appointed to superintend all the affairs of the district, Revenue, Justice and Police; assisted by two covenanted servants, and Native Officers upon a respectable and liberal footing." Para. 35.

Thirdly. "That a Maul Adawlut be established in each district, to be carefully organized on the Revenue system of the Country. That in this Court shall be settled all claims for rent; all complaints for undue exaction of rent; all disputed Revenue Accounts between Tehseeldars, Zemindars, their Sureties and Mortgagees, and all matters of account generally. That it shall determine all complaints relative to forcible dispossession of Land, Water and Premises, and to the possession of Estates left vacant by death, or other cause. That all boundary disputes shall be finally adjusted in this Court. That the decress of the Dewanny Adawluts, comprehending matters of account, or awarding possession of land, shall be executed in the Maul Adawlut. That resumptions of alienated land be also, in the first instance, decided in that Court. That the partition of landed estates and the consequent apportionment of the Government Revenue, be therein conducted. That this Court be superintended by a Native Darogha, to be assisted by the Canoongoes, Treasurer, and Officers of the Revenue, under the immediate controul of the Resident." Para. 36.

Fourthly. "That a Sudder Maul Adawlut be established and organized upon the same plan, under the superintendance of the Board of Commissioners and Sudder Dewanny Adawlut. That this Court be held before one Commissioner, and one Judge of the Sudder Dewanny Adawlut. That in case of difference of opinion, another Judge of the Sudder Dewanny Adawlut be called in. That the nomination of the Chief Revenue Officers of the Residency, be made by the Resident to this Court. That to this Court shall be allowed an appeal from the acts of the Para. 37.

the Resident in the Maul Adawluts; and redress given, or if judged proper, a trial directed in the Dewanny Court."

Para. 38. *Fifthly.* "That a lower Dewanny Court be established at the Station of the Residency, to be conducted by a Native Judge, with power to proceed summarily in minor cases; and whose decision shall be open, according to circumstances, to an appeal, special, or of course, to the Resident."

Para. 39. *Sixthly.* "That the Resident hold a Dewanny Court for trying appeals from the lower Courts; and for trying the larger causes in the first instance; subject to an appeal, regular or special, according to circumstances."

Para. 40. *Seventhly.* "The Courts of the Native Commissioners to be discontinued and trifling civil causes including rents, to be adjusted summarily by Cauzies, Tehseeldars, Canoongoes, Zemindars, and the principal persons in towns."

Para. 41. *Eighthly.* "The Fouzdarree Court, and the immediate charge of the Police and Criminal Jail, to be placed under the first Assistant; subject to the general controul of the Resident.—In this department, the First Assistant to be assisted by the Second Assistant, in receiving the Reports of the Police Officers, and issuing orders thereon; in the superintendance of the Jail; and in taking evidence and making commitments.—But the time of the Assistants should not be occupied with trifling Fouzdarree cases, which might be devolved upon the Moulavee or Pundit of the Station."

Para. 42. *Ninthly.* "Although the immediate charge of the Jail should be confided to the head Assistant; the Resident should consider it an object of his unremitting attention and superintendance."

Para. 43. *Tenthly.* "The Resident to hold a Criminal Court, assisted by a Law Officer for the trial of offences of magnitude; including all those in which the sentence implies infamy.—The Resident to acquit in all cases, and concurring with his Law Officer, to sentence to corporal punishment by stripes, and to imprisonment and banishment for seven years.—In cases of difference with his Law Officer, or his thinking the above punishment inadequate, he should refer the trial to the Nizamut Adawlut. The Resident should also be obliged to refer, as the Court of Circuit are at present, all cases of perpetual imprisonment, and capital punishment, to the Nizamut."

Para. 44. *Lastly.* "That the division of the Benares Court of Circuit, and Provincial Court of Appeal be placed under the new Sudder Dewanny Adawlut;" so that the present

present Court of this denomination at the Presidency, " may be relieved of the whole of the duties of that province; and of the Ceded and Conquered Territory."

246. Mr. Stuart adds on the above plan, that it " does not necessarily imply any change in the actual Police system, but I should strongly recommend the confiding of the Police to the Tehseeldars and Zemindars, and persons having influence in the towns and villages; allowing the Tehseeldars proper officers to hold inquests, draw out the necessary reports, and perform the other duties of detail. From such an arrangement would result a strong and unbroken chain of authority, and dependance, from the Resident down to the lowest servant of the Police, most efficacious for the preservation of the peace of the country." Para. 44.

247. In the Minute which accompanied the paper of remarks containing the plan above stated, Mr. Stuart observed, that since completing his paper, another arrangement had occurred to him " which may be thought free from some of the objections to which the plan contained in the paper is open," and he therefore offerred the following sketch for deliberation. Para. 6.

" That the Districts in the Ceded and Conquered territory, with the exceptions to be mentioned hereafter, be placed under Collectors, with a Maul Adawlut to be established on the principles explained in the plan, and with the powers of Magistrate. The Collectors to be aided in their duties by covenanted Servants, as Assistants, and by Natives upon a respectable footing. That a Court for the decision of Civil Suits, the claim in which shall not exceed, say 1600 Rupees, shall be formed in these Districts, to be conducted by a Native judge, on a respectable footing. His decrees to be executed by the Collector in his Maul Adawlut, as a check against abuse, under rules calculated to prevent this duty proving too burthensome. The present Judges and Magistrates to be withdrawn from these Districts, and formed into two Courts of Circuit and Appeal, consisting each of three Judges. As a Court of Circuit they would possess generally the same powers, as the present Court of Circuit, and perform the Jail Deliveries of the Districts, placed within their jurisdiction. As Civil Courts, I propose that they shall hold a Maul Adawlut to superintend the District Maul Adawluts. As Civil Courts, they would also receive the appeals from the District Civil Courts; and try in the first instance, all claims exceeding the competence of the District Courts. This business they would transact at their own station, or at the station of the Districts, as they might find most convenient. I should propose the following jurisdictions for the Circuit Courts, For one, Furruckabad, Etawa and Agra;—For the other, Bareilly, Moradabad and Allyghur. The Sudder Dewanny Adawlut and Nizamut Adawlut, I should propose to establish on the general principles stated in the plan, but with the necessary modifications, which the modification of the plan will require. The Districts of Al-

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lahabad and Cawnpore, are included among those Districts, for which I have suggested the general arrangement described above. But to keep the Circuits within moderate limits, I propose to place Cawnpore and Allahabad under the immediate controul of the Sudder Dewanny and Nizamut Adawlut. As the superior Court would be fixed at Cawnpore, the Circuit duty of the Nizamut Adawlut would be confined to the single district of Allahabad.—The Monthly Jail Delivery of Cawnpore would not take the Judges from their St tion.—The Districts of Bundlecund, Scharunpore, Northern and Southern, and Goruckpore, I would make into Residencies, on the principles explained in the plan.—The difficulty of finding a sufficient number of individuals, duly qualified to fill the proposed Office of Resident, is certainly an important objection to the original plan, which is surmounted by the modified one.—The duties of the Collectors in the modified scheme are much less arduous and responsible; and those Officers would be subjected to near and rigorous controul; the same check would obviously operate upon their Native Officers.—For the three Residencies, which the modified plan proposes, individuals might readily be found in whom such a trust might be confidently reposed.—The expense of the arrangement need not exceed that of the present establishments; the Collectors being kept upon their present allowances; and the Judges of the Court of Circuit and Appeal placed upon reduced salaries.—Should this modified plan be approved, I should think it equally well adapted to the Benares Province; and in that case an additional Collector should be established at Ghazeepore, or somewhere in that neighbourhood."

248. The principal object of the original plan suggested by Mr. Stuart was, as stated by him, * "to afford real and substantial relief to this Court, from a heavy arrear of business in both the Civil and Criminal Departments; under a conviction that there was no prospect of our being able to keep up our business and prevent further arrears" and as no practicable measure occurred "for limiting the business to our ability, while our present jurisdiction should remain unaltered; that the only expedient means of rendering the Court efficient was to add to the number of the Judges, or to transfer a part of its general Territorial Jurisdiction to a new Court." To the first of these measures † it appeared to Mr. Stuart a decisive objection that it would be attended with a heavy augmentation of expense. But he adds, "I am of opinion that the second measure might be accomplished without that objection, and by means that would effect great improvements in the administration of Justice in the Upper Provinces, in addition to affording relief to this Court."

Paras. 28, 29, 30.

249. After what has been stated in Paragraph 123 to 126 of this Report, on the success

* In para. 48 of his Remarks.

† Paras. 31 and 32.

success of the arrangement adopted from the 1st April 1816, for conducting the business of the Sudder Dewanny Adawlut, and Nizamut Adawlut, and of the further success expected from a continuance of this arrangement, during another year, we do not at present, judge it necessary to consider either of the plans suggested by Mr. Stuart in 1814, with reference to the object of relieving this Court from a part of its business, under the system and Regulations now in force. We shall therefore submit our sentiments upon his propositions, as they respect the second object intended by them, viz. an improvement in the administration of justice in the Upper Provinces.

250. In doing this we beg leave to refer, in the first instance, to the opinion which has already been submitted to Government in the proceedings of the Nizamut Adawlut, under date the 24th February 1816, on the chief proposition for establishing a new Court of Sudder Dewanny Adawlut and Nizamut Adawlut in the Upper Provinces; which, with a difference as to its station and jurisdiction, was also suggested and brought under the consideration of the Court, by Mr. C. Smith, Second Judge of the Benares Court of Circuit, in his report dated the 15th December 1815. The Chief, Second and Fourth Judges of the Nizamut Adawlut, in their resolutions on that Report, adverted to Mr. Stuart's remarks on a similar proposition; and after stating the advantages and disadvantages that might be expected to attend the constitution of a second superior Court, concluded as follows.

"The Court are of opinion that if the whole of the Civil causes, which it may be judged proper to render appealable to the Sudder Dewanny Adaulut, and the whole of the Criminal trials, which it may be deemed expedient to make referable to the Nizamut Adawlut, be not more than can be speedily tried and determined by one superior Court, Civil and Criminal, it is desirable, with a view to the uniform construction of the Laws and Regulations in force, and to maintain a consistency of decision in the Civil judgments and Criminal sentences of the several Courts of Judicature under this Presidency, which are not connected with his Majesty's Supreme Court, that the present establishment of one Sudder Dewanny and Nizamut Adawlut, should be continued. The Court think it unnecessary to enlarge upon this point; but must add their decided opinion, that no practical result to be expected from the institution of a second tribunal, as proposed, would be so detrimental to the general administration of Justice, as the accumulation of Civil causes, and criminal trials, in a single Court of appeal and reference; supposing such Court to be overladen with more business than it could perform."

251. The discontinuance of the Courts of Circuit throughout the Districts of the Ceded and Conquered territory in the Divisions of Bareilly and Benares, which

 was

was proposed in the first of Mr. Stuart's plans, being superseded in a great degree, by the second, which proposes to continue Courts of Circuit in all those Districts, except Bundlecund, Goruckpore and the two Divisions of Seharunpore, it is perhaps unnecessary to offer any express opinion upon that proposition. We shall only observe, that we entirely concur in the sentiments expressed by Mr. Stuart himself,* of the advantages attending the half yearly Sessions of Courts of Circuit, both in "the correction of abuses and injustice, which the controul of the Courts of Circuit, exercised twice a year upon the spot, may be presumed to effect;" and also with respect to the admitted "superiority of the system, by which the trial of important Criminal cases, instead of being confided to the Officer responsible for the peace of the District, is reserved to a higher tribunal, which must be free from all local bias and connections; and from which parties may, by consequence, expect, with greater confidence, a cool and impartial judgment."

Paras. 76 and 77.

252. Mr. Stuart indeed mentions circumstances which appear to him to render the Courts of Circuit less efficient for the purposes intended by them than was expected from their institution. But of these the great quantity of business which some of the Courts of Circuit have to perform, and the hurried manner in which part of it may consequently be sometimes executed, appear to be the chief impediments to a full attainment of the benefits expected from the constitution of those Courts; and we hope that these objections may be removed by enlarging the powers of the Magistrates, and reducing the duties of the Courts of Circuit, as proposed in a former part of this letter. We must therefore consider it one material objection to the first plan suggested by Mr. Stuart, and to such part of the second plan as respects the Districts of Bundlecund, Goruckpore and the two divisions of Seharunpore, that the adoption of either of these plans would (as noticed in the remarks of the Nizamut Adawlut, under date the 21st August 1816, on the proposed extension of a similar plan to the Zillah of Cuttack,) be attended with, "the abrogation of the established mode of trial in cases of a serious nature; and the entire dereliction of the advantages now derived from the Zillah Jail Deliveries being held; and the Jails occasionally inspected, by the Judges of Circuit."

253. To both the plans suggested by Mr. Stuart, we must further oppose the impracticability, at present, of any considerable additional duty being undertaken by the Collectors in the several Districts of the Ceded and Conquered Provinces. This has been already fully stated in considering the general question of transferring the charge of the Police and Office of Magistrate, to the Collectors. Independently

* In para. 75 to 76.

pendently of this practical obstacle, we should further consider it objectionable, on general principles, to establish, at this time, in the Upper Provinces, a system founded upon an union of the Revenue and Judicial authorities, which it was judged expedient to separate, after long experience, in the lower Provinces; and the separation of which forms the basis of the system of internal administration, which has now subsisted for a period of fifteen years in the territory ceded by the Newaub Vizier.

254. Under these objection he general practicability and expediency of the two plans referred to, it appears unnecessary to consider them in detail; more especially as we have already offered our sentiments, in the course of this Report, upon arrangements and provisions corresponding in substance with many of the subsidiary parts of the plans suggested by Mr. Stuart.

255. We shall therefore only add, that his second plan, which must be received as that finally offered for consideration, appears open to the following objections, in addition to those that have been already stated.

First. The constitution of two Courts of Circuit and Appeal, viz. one for the Districts of Furruckabad, Etawah and Agra, the other for Zillahs Bareilly, Moradabad and Allyghur, appears more than sufficient for the Circuit duties; yet insufficient to supply the place of the Zillah Courts, proposed to be discontinued.

Secondly. A removal of the Zillah Judges and Registers, and the substitution of a Native Judge having Civil jurisdiction to the extent of Sixteen Hundred Rupees, without European inspection and controul upon the spot, might, we apprehend, be attended, with serious evils and abuses.

Thirdly. The original civil jurisdiction of the two Provincial Courts, stationed at Furruckabad and Cawnpore, would inadequately supply the public convenience arising from the present jurisdiction of the Zillah Courts, extending to 10,000 Rupees in regular suits; and without limitation in summary suits.

Fourthly. If the districts of Allahabad and Cawnpore were placed under the immediate jurisdiction of a Sudder Dewanny Court, at the former station, as proposed, the inhabitants of those districts would be deprived of the benefit arising from a Court of Appeal.

Fifthly. The inhabitants of Bundlecund and Goruckpore, and the two divisions of Seharunpore, would not enjoy the advantages derived from the established Courts of Judicature, Civil and Criminal, in other districts.

 Sixthly.

Sixthly. The whole of the Native inhabitants of the divisions of Bareilly and Benares would be exposed to much inconvenience, by the entire abolition of the local Courts of the Moonsiffs, now established in those Provinces.

Lastly. The business of the Civil Courts in the Ceded and Conquered Territory not being heavy, or generally in arrear, the Magistrates and their assistants, are able to devote a large portion of their time to the Police, and to the administration of Criminal justice. But the Collectors, and their assistants, could not give equal attention to these departments, whilst occupied, as they now are, with the business of the Revenue Department. This defect would be experienced, in a still greater degree, in the province of Benares, even with the appointment of a second Collector, as proposed. There would still be two Magistrates only for the entire Province; instead of the present Magistrates of Zillahs Mirzapore and Juanpore, and the City of Benares; with the joint Magistrate now stationed at Ghazeepore.

256. Copies of Mr. Stuart's remarks and propositions having been transmitted, in compliance with the wish expressed in his Minute of the 15th November 1815, to the Provincial Courts of the Bareilly and Benares divisions, it may be proper to add, that the only opinion expressly referring thereto, which has been received in answer, viz. a paper entitled "Mr. Fortescue's Memorandum on Mr. Stuart's Minute of the 15th November 1815," and accompanying a letter from the Benares Provincial Court, dated the 3d March 1816, was submitted to Government on the 6th December, 1816.

We have the honor to be,

Honorable Sir,

Your very obedient humble Servants,

J. H. HARINGTON.
R. KER,
JOHN FENDALL,
W. E. REES.
G. OSWALD.

FORT WILLIAM,
The 9th March, 1818.

APPENDIX. A.

APPENDIX. A.

COPY of a Paper annexed to Mr. W. B. Bayley's Statistical View of the Population of Burdwan; and entitled a Statement of the total number of Dwelling Houses respectively inhabited by Hindus and Muselmans, in the district of Burdwan, arranged under the heads of the several Police Jurisdictions.

Number of Thannas.	THANNAS.	*Total of Mowzas.*	*Total of Houses*	*Total of Houses inhabited by Hindus*	*Total of Houses inhabited by Muselmans.*
1	Catwa, ...	230	2,790	18,688	2,102
2	Caithi, ...	157	15,046	6,623	3,125
3	Chand Ghos, ...	220	14,548	11,770	2,778
4	Banpas, ...	92	11,554	10,096	1,458
5	Balcrishen, ...	115	9,218	7,528	1,690
6	Cuchat, ...	310	22,847	19.786	3,061
7	Mengelcot, ...	255	19,331	15,954	3,377
8	Calna, ...	336	24,811	20,817	3,994
9	Sondah, ...	121	10,934	8,978	1,956
10	Salemabad, ...	458	29,341	23,188	6,153
11	Pubethul, ...	265	15,033	12,671	2,362
12	Dignagei, ...	145	19,814	17,533	2,281
13	Somander Gher, ...	160	8,239	6,049	2,190
14	Bersul, ...	110	8,981	6,895	2,086
15	Town of Burdwan and Suburbs, ...	72	9,805	7,651	2,154
16	Cutalpoor, ...	470	24,342	21,326	3,016
	Total...	3,496	2,62,631	2,18,853	43,781

On an average each Police Jurisdiction contains about 218 Mowzas, each Mowza about 75 Houses, each House contains about 5½ Inhabitants: the proportion of Hindus to Moohomedans is as 5 of the former to 1 of the latter, and of Males to Females about 100 of the former to 98 9th of the latter. The total number of Inhabitants in the district, at the average of 5½ to each House, will be 14,44,487. The Jurisdiction of this Zillah includes an area of about 2,400 square miles, and the proportion of Inhabitants to a square mile is more than 600.

(Copy,)

M. H. TURNBULL,

Register.

APPENDIX. B.

APPENDIX. B.

Copy of a Paper received from Mr. HENRY COLEBROOKE, *relative to the Hindoo Assembly, denominated* PUNCHAYET.

THE Punchayet, or assembly of principal persons of the same tribe, or profession, is a tribunal recognized by the *Hindoo* law: as in the following passage cited in the *Madhanya, Smritichandrica, &c.*

"Bhugu ordained ten or else five places for the trial of causes, whereby litigant parties, involved in disputes, may obtain a decision.—The frequenters of forests should cause these differences to be determined by men of their own order; members of a society, by persons belonging to that society; people appertaining to an army, by such as belong to the army; and the inhabitants of town and country likewise, by residents in both. Let the heads of the family or the chiefs of the society or the inhabitants of the City or of the Village, select a referee approved by both parties. The Villagers, the Townsmen, an assemblage of families, associations of mechanics, and a scholar in the four Sciences,* persons belonging to the same class,† allied families, heads of the particular family, constituted Judges,‡ and lastly the King, are the several resorts."

Catyayuna says briefly, "among persons who roam the forest, a Court should be held in the wilderness; among those who belong to an army, in the Camp; and among merchants, in their own societies."

Vrihaspati declares, "An assembly is of four sorts; stationary, moveable, graced by the signet, and governed by the institutes of law. The Judges are as various. A stationary Court is held in the Town or Village: a moveable one in the Forest; one graced by the signet is superintended by the Chief Judge; one governed by the institutes of law, is held before the King."

The author of the *Smritichandrica* observes upon these passages, "Here the first five places of reference are adapted to particular descriptions of persons, as foresters and the rest. If a dispute arise among persons dwelling within the limits of a Village, it is determined by the inhabitants of the adjoining Villages. The heads of families, chiefs of societies, and inhabitants of Towns and Villages, select a referee approved by both Plaintiff and Defendant."

He

* Assisted by other learned persons: for Pitamaha forbids an exposition of the law by one individual however profoundly learned. *Smritichandrica.*

† The term here employed (Varga) is explained in a passage of *Catyayna*, or the authority of *Vidhapati*, "assemblies of families, societies of heretics, companies of armed men, unions of law tribes, as well as other associated persons, are termed classes (Varga)."

‡ The Chief Judge, with three assessors.

He afterwards adds: "A Court held at an appointed spot, is one graced by the signet; for it is attended by the Superintendent or other Officer holding the Seal. The Superintendent of it is the Chief Judge: for he is appointed by the King to try causes; and the Royal Seal should be entrusted to him for the purpose of enabling him to summon defendants. This is implied in the text. The stationary and moveable assemblies are constituted at the request of parties, with solicitation, presents, or other means of inducing consent; for such assemblies are not established by the operation of law, nor by the act of the King. But the Court graced by the signet, and the one held at the King's residence, are established by the Sovereign authority. Therefore to obtain a decision, the Court is resorted to, not constituted for the purpose."

It appears then that the assemblies have no jurisdiction or cognizance of causes, unless submitted to them by the parties, or as the author of the *Viramitrodeya* shews at great length, specially referred to them by the King in the particular case, or under a delegation of judicial power from that authority in suits arising among these fellows.

Their awards are open to appeal; as declared in various passages of the law: *Vrihaspati* says, "Persons who have been fully appointed by the King, the kinsmen of the parties, fellow-artists, co-habitants and others, may decide law-suits among men, excepting causes concerning violent crimes. Meetings of kinsmen, companies of artists, assemblies of townsmen, and Courts of Justice are declared to be judicatories, to which he, against whom judgment is given, may successively resort. A cause which has not been rightly investigated by the kinsmen, must be tried by persons of the same profession with the parties; one which has not been adjudged by fellow artists, should be revised by the townsmen, and what exceeds the compass of their understanding, must be heard by constituted Judges. The members of a Court of Justice are superior in jurisdiction to the kindred and the rest: the Chief Judge is above them; and the King is superior to all, since causes are always justly decided by him; for the intellect of the sovereign surpasses the understanding of others in the trial of controversies of all degrees." *Catyayana* in like manner says, "A cause which has been tried by the kinsmen, must be revised by successive judicatures, if either party be dissatisfied, until it has been finally decided by the King. But they who pass decisions in law suits without being duly authorized, are guilty of assuming regal functions; and the King shall punish their presumption; yet persons wearing the token of a religious profession, companies of artisans, assemblies of co-habitants, merchants, and bodies of armed men, should always adjust their differences according to their own laws."

(Copy)

M. H. TURNBULL,

Register

APPENDIX. C.

APPENDIX. C.

(COPIES)

Extracts from the Proceedings of the Sudder Dewanny Adawlut.

READ the following Letter from the Officiating Judge of the Benares Court of Appeal, requesting the opinion of the Court whether "arbitration awards "when proved to and confirmed by the Zillah Judge, and made a decree of Court "under Clause II. Section III. Regulation VI. 1813, are to be held in the light "of Regular or Summary Decrees."

Sudder Dewy. Adt. Procdgs. 21st Dec. 1815.

To

M. H. TURNBULL, ESQ.

Register to the Sudder Dewanny Adawlut, Fort William.

Sir,

Officiating Judge Benares Court of Appeal, dated 11th Dec. 1815.

I request you will obtain for me the opinion of the Court, whether arbitration awards when proved to, and confirmed by the Zillah Judge, and made a "decree of Court," under Clause II. Section III. Regulation VI. 1813, are to be held in the light of Regular or Summary Decrees. That is, if the former (Regular Decrees) not liable to be reheard by the Judge and appealable only to a superior Court, or if the latter (Summary Decrees) liable to be reheard on the institution of a Regular Suit in the same matter and before the same Judge.

2. Having observed a practice of considering the decrees in question to be Summary, I venture to submit the question, being myself of a contrary opinion.

I have the honor to be, &c.

(Signed) T. FORTESCUE,

Offg. Judge.

The Chief Judge proposes the following instructions to be issued to the Benares Court, in reply to the letter above recorded.

Sudder Dewy. Adt. Procdgs. 2d. Dec. 1815,

"The application to the Dewanny Adawlut in the case of private awards provided for by the 2d Clause of Section III. Regulation VI. 1813, as well as the execution of such awards when proved by the Court, being expressly declared to be Summary, the Court of Sudder Dewanny Adawlut are of opinion, that the party dissatisfied with any such award or the execution of it, is at liberty to prefer a Regular Suit in the Civil Court, as in other cases of Summary process."—The 3d Judge dissents from the above construction of the rule cited, and will record his sentiments on the subject hereafter.

The Register lays before the Court the following Minute of the 3d Judge on the subject of the letter from the Officiating Judge of the Court. of Appeal for the division

Procdgs. 11th Jan. 1816.

division of Benares, dated the 11th December last, and recorded on the proceedings of the 21st of that month.

Minute of 3d Judge, dated 10th Jan. 1816.

I entirely concur with the Officiating Judge that private awards of arbitration when confirmed and executed in the manner prescribed by Clause II. Section III. Regulation VI. 1813, are to be considered of the same validity as Regular Decrees of Court, and to be affected only by a regular appeal.

2. The intention of Regulation VI. 1813, was to encourage the decision of contests by arbitration; and with that view awards obtained in a private arbitration are not only made valid, but a privilege is given to the parties in whose favor they have been passed: provided they apply within six weeks of procuring the confirmation of them, and the execution of them, when confirmed, without the delay or expence of a regular action.

3. At the time Regulation VI. 1813, passed, the execution of Regular Decrees took place in a summary way; and the same forms and rules for this proceeding have been introduced by Regulation XXVI. 1814: it may still be considered as summary. The second Clause of Section III. Regulation VI. 1813, therefore, by requiring awards to be executed summarily, as decrees of Court, meant clearly, in my opinion, to put them upon the same footing with those decrees.

4. This construction is confirmed by the Second Clause of Section V. which, in suits for forcible dispossession and disturbance of possession, requires that the parties shall be encouraged to go to arbitration, not on the question of their possession merely, but upon their rights; and expressly provides in such last case, that the award when confirmed by the Court shall be of the same force and validity as a regular judgment. Surely no solid reason can be given why an award made and confirmed in a Summary Suit, should have been made of equal force as a Regular Decree, while awards confirmed under Clause 2d of Section III. were treated as Summary Decrees, and open to another suit.

5. It can make no substantial difference between the two cases, that to render an award of the same validity as a regular judgment under Clause 3d, of Section V. the reference to arbitration must express that the award is intended to be final. This provision was obviously inserted to obviate the doubt which might otherwise have arisen in these cases, since the original contest being for possession merely, a reference to arbitration if not otherwise framed, would actually be construed merely to comprehend only that question of possession. In the cases contemplated by Clause Second of Section III. the arbitration is clearly supposed to be upon the right, and of course intended to be final.

6. Because the process by which the confirmation and execution of awards under the Clause just cited is directed to be summary, it seems to have been inferred that awards thus confirmed and executed are to be considered as upon the same footing with decrees passed in other summary suits provided for by the Regulation. I do not see the force of the argument; there is nothing in the nature of a summary proceeding which determines it to be provisional. In those cases the intention, that the summary proceeding shall, at the option of the parties, be followed by a regular suit, is clearly expressed. In the cases under our consideration there is no such provision, and it appears to me that the policy of the Regulation is manifestly against it. So much so that if the Court should adopt such construction, I would propose that a rule be submitted to the Government, declaring that an award confirmed under Clause 2, Section III. of the Regulation, shall be considered of the same validity as a regular judgment, and open only to a regular appeal.

7. In considering the question immediately before the Court, other difficulties likely to arise upon the construction of this Regulation have occurred to me, which it may save future trouble to state.

8. Clause 2, Section III. provides that applications for the enforcement of private awards shall be preferred to the Dewanny Adawlut; by which I understand the Court of the Zillah or City Judge; and upon this provision a question may arise, whether the Judge can refer such applications to his Registers, and the Sudder Aumeens, when the property in litigation is of a value which would render a case referrible to those officers, if brought forward by a regular suit.

9. I should be disposed to answer this question in the affirmative. Though directed to be preferred summarily, those applications are evidently in the nature of suits brought to enforce awards; and the determination of them with an appeal to the Judge seems entirely consistent with the duties and powers of those officers. The Sudder Aumeens cannot indeed as matter of course execute their own Decrees, but I need hardly remark, may under the provisions of Regulation XXIII. be employed by the Judge to execute not only their own, but his judgments.

10. But a more serious difficulty may arise on this Clause. All cases of awards brought forward under the Clause, are to be preferred in the first instance to the City or Zillah Court, whatever may be the amount or value of the property in contest, and according to my construction of the Clause, the awards if confirmed are to be considered as on the same footing with regular judgments. If therefore the Court should resolve that under Clauses second and third of Section V, Regulation XXV. 1814, an appeal will lie from the Courts of Appeal to this Court, only in cases tried by the

Provincial

Provincial Courts in the first instance; it would follow that no judgments of the Provincial to whatever amount passed on appeal from awards confirmed by the Zillah and City Courts under the Clause, will (except by special appeal) be appealable to this Court, and cases of whatever amount will equally be cut off from the tribunal of the King in Council. This matter will require attention. With respect to the construction of Clauses second and third of Section V, Regulation XXV, 1814, I beg to refer to my minute recorded on the 21st December 1815.

11. Another question is on the effect of the rejection of an award under the said Clause. As it is only the confirmed award which the Clause puts upon the footing of a regular decree, I am of opinion that the rejection of the award would leave the party an option of bringing his regular action, on which he might again bring forward the award with any other additional grounds of claim in his possession.

12. A further question will occur upon the case of the reversal by an appellate Court of the judgment of the original Court, supporting an award under the said Clause. I am of opinion that the reversal should in that case be considered as a regular judgment; because according to the construction which I have adopted, it will be passed on a regular appeal against the confirmed award, which is to be considered as of equal validity with a regular judgment.

13. I have omitted in its proper place another question which may arise upon the said Clause if my construction of it should be followed. It is, whether execution of an award confirmed under the Clause can be stayed upon an appeal. I think not. It may be objected that as upon my construction the confirmed awards are to be considered as regular decrees, they must be liable to all incidents of those decrees. I answer, that though generally liable, yet the Regulation declaring expressly, that the awards upon confirmation are to be executed, it in this respect constitutes a difference between these awards and regular decrees.

14. If it should be found necessary to enact any new rules respecting arbitration, I should also be glad to see an improvement introduced, of which the third Clause of Section III, of the Regulation appears to me capable. It is, that when private awards have been executed by the parties, they shall not be liable to impeachment, unless a suit to impeach them and recover the property held under them shall be brought within one year from the execution, or just cause shewn for the delay. The Clause as it stands provides that when private awards shall be tendered in regular suits, they shall if they have been performed, be allowed equal validity as if made under the authority of the Courts. According to this provision, these private awards would for a great length of time be open to all grounds of impeachment to which awards made in Court are open, which would prove very inconvenient. In the case

of

of awards made in Courts, any objections to them must be preferred and disposed of within a short and definite period. But in the other case it is evident that objections on the merits of which it would be difficult to decide, would be against awards executed and acquiesced in for any length of time within the limitation of actions; and much litigation and uncertainty of rights would result.

15. The importance which I attach to Regulation VI, 1813, induces me to propose in conclusion, that we should address the Government, recommending their calling upon the Board of Commissioners for the Western Provinces, to instruct the Collectors under their authority, to embrace every opportunity which may offer of promoting the objects of the Regulation, by explaining its provisions to the people, by encouraging them to arbitrate their differences under it, and by pointing out to them the means which the Regulation affords of obtaining the confirmation and execution of private awards in the Civil Courts. The great influence over the Landholders and Tenantry, which the Collectors must possess in that territory, would I am satisfied, if strenuously exerted to ensure the ends proposed by the Regulation, be productive of the most beneficial consequences—I should hope that much, though not equal good, might be effected by adopting the same measure in the Lower Provinces, more especially in the Province of Behar, to which therefore, I beg to extend the proposed recommendation to the Government.

(Signed) J. STUART.
3rd Judge.

Sudder Dewanny Adawlut, Proceedings 11th Jan. 1816,

Under the difference of opinion between the Chief and 3d Judges on the construction of Clause 2, Section III. Regulation VI. 1813, referred for the determination of the Court by the officiating Judge of the Benares Provincial Court, the Register is desired to obtain the sentiments of the other Judges of the Court on the point in question, as well as on the other points noticed in the Minute of the 3d Judge.

Sud Dewy. Adt. Proceedings the 24th February 1816,

With reference to the Minute of the 3d Judge, entered on the proceedings of the 11th January last, regarding the construction of Section III. Regulation VI. 1813, the following Minutes are recorded by the Chief, 2d and 4th Judges of the Court.

Minute of the Chief Judge dated 24th February 1816.

The question referred to the Court in Mr. Fortescue's letter of the 11th December, 1815, and to which the answer proposed by me on the 21st of that month had relation, was as follows. "Whether arbitration awards, when proved to and confirmed by the Zillah Judge and made a Decree of Court, under Clause II. Section III. Regulation VI. 1813, are to be held in the light of Regular or Summary Decrees. That is, if the former (regular Decrees) not liable to be reheard by the Judge and appealable only to a superior Court, or if the latter (summary Decrees) liable to be reheard

reheard on the institution of a regular suit, in the same matter and before the same Judge."

2. The first and second Clauses of Section III. Regulation VI. 1813, noticed in the above extract, are in the following terms.

First. "Persons between whom disputes may exist respecting the property of land or limited tenures therein, or rights dependant thereon, whether the same be or be not depending in the Courts of Judicature, are at liberty without any application to the Courts to refer the same to private arbitration; and the awards made by the arbitrators and umpires appointed in such case by the parties, shall be supported and enforced by the Courts, under the following rules and limitations."

Second. "Whenever a dispute, respecting the matters above enumerated, shall have been referred to private arbitration; and an award shall have been duly made if either party shall refuse to perform the awards, it shall be competent to the other party, within the period of six months from the date of the award, to apply *summarily* to the Dewanny Adawlut; and upon such application, if the Court, after calling upon the opposite party for his answer, be satisfied that the award was duly made by arbitrators, or umpires appointed by the free will and consent of the parties, and such award shall be liable to no impeachment, which would have warranted the setting it aside, if it had been made under the authority of the Court, shall cause the same to be *summarily* executed, as a Decree of Court, calling upon the arbitrators and umpires if necessary, to attend and give their assistance in the execution of their said award; provided always that if such application for the enforcement of a private award shall not be made within the period above prescribed, the Court shall not admit any plea whatever for the delay; but shall reject such application, and refer the party preferring it to a regular suit."

3. This Court has already determined, on the 31st of October last, "that applications made to the Courts for the execution of awards by private arbitration, under the second Clause of Section III. Regulation VI. 1813, are to be received and enforced, under the rules applicable to summary process as directed in the said Clause." And it appeared to me that I was following up this construction, as well as the clear meaning and intention of the Clause referred to, when I proposed to inform the Officiating Judge of the Benares Provincial Court, that "the application to the Dewanny Adawlut in the case of private awards provided for by the 2d Clause of Section III. Regulation VI. 1813, as well as the execution of such awards when approved by the Court being expressly declared to be summary, the Court of Sudder Dewanny Adawlut are of opinion that the party dissatisfied with any such award, or the execution

cution of it, is at liberty to prefer a regular suit, in the Civil Court, as in other cases of summary process."

4. By this it was not meant, as the 4th Judge appears to have understood it, that the institution of a regular suit should nullify the award and summary judgment given in confirmation of it, by entitling the Plaintiff to a trial of his claim *de novo* without any regard to the award and summary judgment. This would indeed defeat the evident object of the Section referred to, and render the award when executed, of no further use than in obtaining or securing a temporary possession of the disputed land, for the party in whose favor it might be passed. But it is evidently intended by the provisions of Section III. Regulation VI. 1813, that the private award therein mentioned should have the same validity as if made under the authority of a Court of Judicature, pursuant to the rules noticed in the preceding Section (viz. those contained in Regulation XVI. 1793) and consequently, that on the trial of a regular suit, or appeal, they should "not be set aside, except it be fully proved to the satisfaction of the Court, by the Oaths of two credible witnesses, that the arbitrators have been guilty of gross corruption, or partiality, in the cause in which the award may be made."

5. On the fullest consideration of the reasons stated by the 3d Judge, in his Minute of the 10th ult. against the construction given by me to the 2d Clause of Section III. Regulation VI. 1813; I can see no sufficient reason to renounce it, and to adopt the construction proposed by him, which, it appears to me, would lead to much difficulty and embarrassment.

6. If the application and process which are provided for by the Clause abovementioned be not considered of a Summary nature and subsidiary, as other Summary process relative to the possession of land are, to a regular suit; they must be deemed, in substance, Regular suits; and if the cause of action exceed five thousand Rupees, the cognizance of them, in the first instance, under Section III. Regulation XIII. 1808, and the first Clause of Section V. Regulation XXV. 1814, would appertain to the Provincial Courts. But there is no provision to this effect in Regulation VI. 1813; on the contrary the 3d Judge construes the Clause in question to intend that all applications for the enforcement of private awards are to be made to the Zillah or City Civil Court; and I fully concur with him.

7. By Section VII Regulation XIII. 1808, "all Summary Suits authorized by the Regulations, whether for recovering the possession of land, or other property in cases of forcible dispossession, or for the speedy realization of arrears of rent, or for any other purpose in which a summary process is sanctioned by the Regulations,"

are

are exclusively cognizable "In the Zillah and City Courts, whatever may be the produce, amount or value of the land, or other property, in dispute." This provision, considered with that noticed, relative to the trial of original regular suits exceeding five thousand Rupees, which are exclusively cognizable in the Provincial Courts, and with the admitted intention of the second Clause of Section III. Regulation VI. 1813, that all applications under that Clause, must be made to the Zillah or City Court, appears to me conclusive, in determining the question, whether the application and process which are provided for in that Clause were intended to be of a summary nature, or of the nature of a regular suit, add to this the express terms of the Clause that the party is "to apply Summarily to the Dewanny Adawlut;" and that the award, if not liable to impeachment, is "to be summarily executed as a Decree of Court;" and I cannot, I confess, see the smallest ground of doubt upon the subject.

8. The 3d Judge observes that "at the time Regulation VI. 1813, passed, the execution of regular decrees took place in a summary way." But if so, what occasion was there for any special provision in the second Clause of Section III. Regulation VI. 1813, that the decrees of Court therein referred to, should be summarily executed. I cannot admit however, that the established process for the execution of regular decrees, at the time of enacting the above Regulation was summary. It was formally prescribed in Section VII. Regulation IV. 1793, as one of the rules immediately connected with the decision of regular suits, and requires, before the judgment be put in execution, that "the parties have been heard, the witnesses on both sides examined, and the exhibits received and considered."

9. The 3d Judge has himself stated another serious difficulty attending his construction, that confirmed awards should be considered on the same footing with judgments in regular suits, and consequently appealable to the Provincial Courts, viz. that whatever may be the amount of the cause of action, no second appeal will be open to this Court, under the provisions of Section V. Regulation XXV. 1814, (unless the second and third Clauses of that Section be construed, as proposed in a separate Minute recorded by him) except on the grounds prescribed in Section II. Regulation XXVI. 1814, for the admission of special appeals, and therefore in some cases not only the regular appeal to the Court of Sudder Dewanny Adawlut may be intercepted, but that allowed by Act of Parliament to the King in Council may be also cut off.

10. If the majority of the Court should determine that the private awards confirmed by the Judges of the Zillah and City Courts, under the second Clause of Section III. Regulation VI. 1813, or the second Clause of Section IV. of the same Regulation, are to be considered of the same nature and effect as judgments of the

Zillah

Zillah and City Courts in regular suits; and consequently within the rules for appeals from those Courts to the Provincial Courts, I shall certainly be of opinion that a new Regulation is requisite to modify the provisions of Section V. Regulation XXV. 1814, so as to admit of a second appeal in cases of a certain amount to this Court; or what would be preferable, to provide for an appeal in such cases to this Court, instead of the Provincial Court. If however the construction which I contend for, as the more obvious intention of the provisions contained in Regulation VI. 1813, be adopted by the Court, no additional Regulation is called for, and I cannot but think the omission in that Regulation of all mention of appeals, a strong ground of presumption that the process authorized in the second Clause of Sections III. and V. respectively was intended to be Summary; and subsidiary to a regular suit.

11. I was absent in June 1813, when the draught of Regulation VI. of that year was submitted to Government.—But on referring to the papers which were then before the Court, and upon which the provisions of the Regulation appear to have been partly founded, viz. a letter from Mr. J. Shakespear, Judge and Magistrate of Zillah Nuddea, dated 1st February, 1812, and a letter from Mr. Fortescue, Judge and Magistrate of Zillah Allahabad, dated the 20th August, 1812, (both noticed in paragraph 25 of a letter from the Secretary to Government, dated 10th October, 1812, which desired the Court to prepare and submit the draught of a Regulation for referring disputes concerning land or crops to arbitration) I find nothing in them which indicates an intention that the summary process then under consideration, was to preclude the ultimate and usual course of proceeding by a regular suit, if any party dissatisfied with the summary process, should wish to have recourse to it. On the contrary the letters of the Judges and Magistrates, both of Nuddea and Allahabad, relate clearly to a Summary process, subsidiary to a regular suit.

12. The 3d Judge has founded an argument for his construction of the Second Clause of Section III. Regulation VI. 1813, on the construction given by him to the Second Clause of Section V. of the same Regulation, and he observes that "no solid reason can be given why an award made and confirmed (under the Second Clause of the Fifth Section) in a Summary Suit, should have been made of equal force as a Regular Decree; whilst awards confirmed under Clause II. of Section III. were treated as Summary Decrees, and open to another Suit."

13. But although the expression "shall be held of the same force and validity as a regular judgment," at the end of the Second Clause of Section V. is ambiguous; and might certainly be construed to mean a judgment passed in a Regular Suit, if other parts of the Regulation, and the provisions of other Regulations in force at the

same

same time, would admit of this construction; it is evident that the other parts of the Clause in question have reference to the established Summary process in cases of forcible dispossession; and on a general consideration of what has been stated relative to the Second Clause of Section III. Regulation VI. 1813, which is equally applicable to the Second Clause of Section V, I am of opinion that the same interpretation must be given to both Clauses; that the expression quoted from the latter Clause means no more than the "decree of Court" mentioned in the former, viz. that the award confirmed by it shall be judicially maintained, until it be shewn to have been obtained by corruption or partiality, as expressly provided by Section XXVIII. Regulation V. 1793, and Section XXII. Regulation VI. 1793, on the case of awards given by arbitrators and judgments founded upon them in regular Suits, and consequently that if the party against whom an award is given, whether under the Second Clause of Section V. or the Second Clause of Section III. Regulation VI. 1813, shall be dissatisfied with the Summary inquiry and judgment of the Zillah and City Judge, who may confirm the award; alleging that the award is impeachable, as corrupt and partial, he must at his own charge for fees and costs, institute a Regular suit to prove the same, either in the Zillah or City Court or the Provincial Court, according to the amount of the assessment, or the computed value of the land in dispute.

14. I cannot perceive that this construction of Regulation VI. 1813, will, in any respect tend to defeat or discourage the object of that Regulation, viz. the decision of contests respecting land by arbitration; on the contrary it appears to me to afford a just and proper support to awards given under the provisions of the two Clauses referred to, by throwing upon the party objecting to them, after a Summary inquiry and confirmation, by the Zillah or City Judge, the cost and inconvenience of instituting and prosecuting a Regular Suit.

15. If the Second Judge, who has not yet recorded his opinion, should concur in the construction which I have proposed, and which will consequently become the construction of the Court, it may be useful to communicate it by a Circular letter to the Provincial, Zillah, and City Courts. Indeed, whatever may be the construction finally adopted by a Majority of the Court, this measure will be expedient to prevent future uncertainty, respecting the provisions of Regulation VI. 1813, and a different application of them by different authorities.

(Signed) J. H. HARINGTON.

Chief Judge.

I entirely concur in the construction given in the Minute of the Chief Judge to Clause Second, Section III. and Clause Second, Section V of Regulation VI. 1813

Minute of the 2d Judge, dated 24th Feb. 1816.

(Signed) J. FOMBELLE,

Second Judge.

I am of opinion that decrees made on private awards under Clause II. Section III. Regulation VI. 1813, have the same force, as decrees founded on awards made under the authority of the Court.

Minute of the 4th Judge, dated 30th Jan. 1816.

It is stated in the Clause in question, that private awards are to be summarily executed as decrees of Court, and not executed as Summary decrees of Court.

In Section IV it is declared, that no decrees founded on private awards, shall be amended or reversed upon the ground of being so founded; it therefore I think was not the intention of the framers of the Regulation, to render all decrees made on private awards, after the promulgation of the Regulation, nugatory, by permitting the parties to institute a Regular Suit, as soon as the private award is made a decree of Court, and summarily executed.

(Signed) R. KER,

Fourth Judge.

RESOLVED, in conformity with the opinion of the Majority of the Court, that the following Circular letter be written to the Provincial, Zillah and City Courts, by the Register.

Sudder Dewanny Adawlut Proceeding, 24th February, 1816.

To the PROVINCIAL, ZILLAH AND CITY COURTS.

Circular Letter to the Provincial, Zillah and City Courts. Proceedings 24th February, 1816.

Gentlemen,

A reference having been made to the Court of Sudder Dewanny Adawlut, with a view to ascertain whether private awards, confirmed and executed by the Judge of a Zillah or City Court, under the Second Clause of Section III, Regulation VI: 1813, are to be considered as Summary judgments, subsidiary to a Regular Suit, or as judgments in Regular Suits, appealable to the Provincial Courts; I am directed by the Court to communicate, for your information and guidance, the following construction given by them, as well to the Clause abovementioned, as to the Second Clause of Section V of the same Regulation.

2. The Court had, on a former reference to them, determined, that applications made to the Zillah or City Court for the execution of private awards under the Second Clause of Section III, Regulation VI. 1813, are to be received and enforced, under the rules applicable to Summary process, as directed in that Clause.

3.

3. They are further of opinion that such Summary process is subsidiary to a regular Suit, either in the Zillah or City Court, or in the Provincial Court, according to the value of the disputed property, calculated according to Section XIV. Regulation I. 1814, and Section XXIII. Regulation XXVI. 1814. But as it is evidently intended by the provisions of Section III. Regulation VI. 1813, that the private awards therein mentioned, when summarily confirmed and enforced by a Zillah or City Court, should have the same validity as if made under the authority of a Court of Judicature, pursuant to the rules noticed in the preceding Section (viz. those contained in Regulation XVI. 1793;*) the Court are of opinion that on the trial of a Regular Suit or appeal, instituted by the party against whom the award may have been given, it should "not be set aside, except it be fully proved to the satisfaction of the Court by the oaths of two credible witnesses, that the arbitrators have been guilty of gross corruption, or partiality;" as expressly provided in Section IX Regulation XVI. 1793.†

4. The Court observe that the first part of the Second Clause of Section V, Regulation VI 1813, has express reference to a Summary process, in cases of forcible dispossession, or disturbance of possession, and directs the Zillah and City Courts, "to use every proper means for inducing the parties to refer their disputes to arbitration; with a view either of settling the possession until the matter can be investigated on a Regular Suit; or to make a complete and final adjustment of their difference."

5. In the former case, viz. when the award may be for the temporary possession only, until the merits of the claim of right shall be determined on a Regular Suit, no doubt can arise as to the award, and Summary execution of it, under the Second Clause of Section V. Regulation VI. 1813, being open to a Regular Suit upon the merits of the case, in the proper Court, according to the value of the property in dispute.

6. But as a question may arise, on the latter part of the Clause abovementioned, when the award, with the consent of the parties, may include a complete adjustment of their respective claims of right to the contested property, the Court judge it proper to advise you that their construction of the Second Clause of Section III, Regulation VI, 1813, and of the validity of private awards summarily enforced by the Zillah or City Court, in pursuance of that Clause, (as stated in the 3d paragraph of this letter) is equally applicable to the private awards referred to in the concluding part of the Second Clause of Section V. of the same Regulation.

7. By the expression at the end of the last mentioned Clause, that the award, when confirmed by the Courts, shall be held of the same force and validity as a regular

* Or XXI. 1803, for Upper Provinces.
† Regulation XXI. 1803, in the Upper Provinces.

lar judgment, the Court understand, what is expressed in the Second Clause of Section III. by a summary execution of the award as "a decree of Court;" viz. that the private award, confirmed and executed on a summary inquiry by the Zillah or City Court, shall be judicially maintained, until it be shewn to have been obtained by corruption or partiality; as expressly provided by Section XXVIII. Regulation V. 1793, and Section XXII. Regulation VI. 1793,* in cases of awards given by arbitrators, and judgments founded upon them in Regular Suits, consequently that if the party against whom the award is given, shall be dissatisfied with the summary judgment confirming the award, and be desirous of impeaching the award, as corrupt and partial, he must institute a regular suit under the general provisions for such suits, to establish the same in the proper Court.

8. In such cases, if the award be set aside as partial and corrupt on the trial of the Regular Suit, the merits of the claim of right, by either party, would of course, be open to investigation; or to a second reference to arbitration, under the provisions of Section II. Regulation VI. 1813; and the former Rules therein specified.

I am, &c.

(Signed) M. H. TURNBULL,

Register.

FORT WILLIAM,
February 24, 1816.

(True Copies)

M. H. TURNBULL,

Register.

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* Section XXVIII. Regulation IV. 1803, and Section XXII. Regulation V. 1803, in the Upper Provinces.

APPENDIX D.

APPENDIX. D.

To

THOMAS BROOKE,
W. T. SMITH,
W. COWELL and
G. OSWALD, } Esquires,

Judges of the Court of Circuit for the Division of Moorshedabad.

GENTLEMEN,

I have the honor to acknowledge the receipt of a letter from the Register of your Court, under date the 31st ultimo, requiring certain explanations on my monthly Report for April last, together with your Court's remarks and orders thereon.

2d. With reference to the first Paragraph of those remarks, I beg to observe, that of the 111 persons confined in Jail,

12	were apprehended in February.	
35	Ditto .... in March.	
64	Ditto .... in April.	
111		

The reasons why the cases of the persons apprehended in February and March were not disposed of, are stated particularly in the Persian report and list which accompany this letter.

3d. Of the 685 persons in Bail,

6	Are on Bail since	....	....	November, 1813.
1	Ditto	....	....	December.
1	Ditto	....	....	March, 1814.
1	Ditto	....	....	June.
2	Ditto	....	....	July.
61	Ditto	....	....	August.
25	Ditto	....	....	September.
37	Ditto	....	....	October.
72	Ditto	....	....	November.
74	Ditto	....	....	December.
76	Ditto	....	....	January, 1815.
95	Ditto	....	....	February.
106	Ditto	....	....	March.
128	Ditto	.....	.....	April.
685				

Without

Without going through the whole of the cases of these persons, it would be impossible for me to assign the reasons for their laying over. The generality of them are under reference for trial to my Assistant, but the true cause will be found to exist in the impracticability of myself and one Assistant getting through the heavy and accumulating business of the Fouzdarry Court of this district, on which I shall enlarge more fully in the subsequent part of this address.

4th. On the 2d paragraph I beg to observe, that the person noticed to have been apprehended in March 1814, was on Bail under trial before the Assistant.

5th. Of the remaining 122 persons, these cases were disposed of in April.

103 were on Bail.
and 19 confined in Jail.

122

6th. Of the 95 persons acquitted,

4 persons were confined in Jail, and
91 were on Bail.

95

7th. Of the 28 persons mentioned as unfinished,

14 were on Bail and
14 were in Jail.

28—Of whom 7 were committed to the Court of Circuit.

8. With respect to the concluding part of the Court's Orders, I beg leave to observe, that the numbers of persons entered in the report as punished or released, apply equally to the cases tried by my Assistant and myself, and that the orders on the 71 persons for assault, were passed chiefly by the former.

9. I cannot however omit this opportunity of noticing to the Court, how little the powers given to Assistants are calculated to relieve the Magistrate from the arduous duties of his Office.—They can only pass orders on the most trifling and insignificant cases, which, as far as relates to the Police of a district, are of little or no consequence whatever.

10. Since the enactment of Regulation III. of 1812, requiring that all Complaints of a trivial nature should be preferred at the Magistrate's Court (at least since the provisions of that Regulation have been generally understood,) the number of persons detained on Bail have been gradually increasing. Formerly these complaints were chiefly preferred at the Tannahs, and the first ebullition

lition of anger being over, the subject of it was either compromised or forgotten, and the complaint seldom followed up to the Magistrate's Court; but now a Plaintiff is forced to pay into Court a provision for the subsistence of his witnesses, and feels himself bound to carry on the suit, and thus the Courts are over-run with Plaintiff's witnesses and defendants, in cases, which for the greatest part, neither the Magistrate or his Assistant can find time to bring to a determination.

11. In order to preserve as much as possible, method in the conduct of the business, a particular day in the week is set apart for receiving petitions and transacting other miscellaneous business; at the lowest computation there are 30 of these petitions presented, requiring a summons of the persons complained against, and supposing each petition to require the attendance of 5 persons, an average much underrated, 150 persons will be summoned every week, or 600 monthly, and if half of these, or less, attend and give bail, it is impossible that their cases should be disposed of in the course of the month, and consequently there must be a monthly increase of persons detained on bail; this has been gradually the case since the beginning of 1814, and as your Court will have observed, there are now no less than 685 persons on bail.

12. It is in a great measure owing to the accumulation of these cases that delay takes place in bringing those of prisoners to a final decision; there are many of them which if referred to my Assistant, would necessarily under the rules in force be returned to me for determination, which, besides that he has fully sufficient to occupy him, would be only giving double trouble, and it is impossible for me to sit in Court, and hear persons clamouring around me for redress, without doing every thing in my power to grant it, and consequently the Prisoners are sometimes made to take their turn for trial.

13. I would not wish by what I have said, to be understood to recommend a recourse to the old plan of allowing the Darogahs to receive petitions for trifling offences, as I am fully aware how much that power was abused, and that it would tend to withdraw their attention from the more important duties of the Police; but I would wish to shew that it is in vain to enact rules for the prevention of litigious and vexatious complaints, when the evil lies in there not being a sufficient number of officers to decide on those, which require to be investigated, with that promptitude so essential to the efficiency of the laws.

14. In order to facilitate the decisions of criminal cases, and to free the Magistrate's Court from the present load of business, I would suggest that the Register or

head

head Assistant might be empowered (under similar rules and restrictions with those enacted by Section IX. Regulation XXIV. 1814, with reference to the accumulation of Civil suits) to try and determine finally all cases referred to him by the Magistrate, and to make commitments to the Court of Circuit in all cases, excepting in those of Murder and Decoity, and affrays attended with homicide or wounding, and that his power of fine and imprisonment should extend to half, that which is at present vested in the Magistrates. The Magistrate's attention would then be given more particularly to those cases, and he would have some time to look about towards the general improvement and amelioration of the Police.

15. I would further suggest that the Mahommedan Law Officers of the Zillah Courts should be vested with the powers at present delegated to the Assistant, subject to the same restrictions of reference from, and revision by the Magistrate, and to some further rules for their guidance which it might be necessary to enact.

16. I have long entertained an opinion of the practicability of this arrangement, and I cannot in my humble judgment discern any valid objection to its adoption, which do not apply two fold to the present mode of conducting the criminal business. It can hardly be urged that Registers are not generally speaking, qualified to conduct trials for Burglary and Thefts, &c. and indeed the only grounds for excepting the three descriptions of cases before mentioned, are, that they more immediately affect the state of the Police of a district, the responsibility for which must properly rest with the Magistrate. Nor can it, I think, be asserted, that the Law Officers, whose opinions not unfrequently influence a sentence of life and death, and the most severe corporal punishments, are incompetent to try cases of petty assault and theft; their decisions, as the Assistants now are, would be subject to revision by the Magistrate, and the power that they at present possess in the determination of Civil suits is of far greater extent and importance. Three days in the week would be given by them to the Civil, and three to the Criminal business, and though it might be necessary to augment their salaries, the fines imposed by their decisions would more than reimburse to Government the encrease of them.

17. At all events, unless some mode is adopted for getting through the business, it would be better that petty assaults should be declared not cognizable by our Courts, than that people should be induced to deposit their money, and absent themselves from their homes and families, and not only themselves, but cause the absence of many others, in the vain hope of obtaining redress of grievances which in the present state of things cannot be rendered to more than ten in thirty who seek it.

I have the honor to be, &c.

(Signed) H. SHAKESPEAR, *Magistrate.*

ZILLAH RAJSHAHYE, FOUZDARRY ADAWLUT, *the 15th June*, 1815.

To

TO THE MOORSHEDABAD COURT OF CIRCUIT.

GENTLEMEN,

Niza. Adaw } I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you dated the 17th July last, submitting with the abstract statement of persons remaining for examination in the several districts of your division at the end of May, an original letter from the Magistrate of Zillah Rajshahye, dated 15th June.

2. The Court have also had before them a similar statement for the month of June, submitted with your letter of the 21st ultimo, whereby their attention was again led to the subject of the Magistrate's letter abovementioned.

3. The Court are not prepared to offer any immediate opinion upon the proposition in the 15th paragraph of Mr. H. Shakespear's letter, for vesting the Mahomedan Law officers of the Zillah Court, with the powers at present delegated to the Assistants. They observe however, that the inconveniences stated to be experienced from the inadequate powers of the Assistant, may be materially obviated, without any new rule, by vesting that officer with the powers of Assistant Magistrate, under the provisions of Regulation XVI. 1810, and with a view to the suggestion of this measure to Government, the Court desire to be furnished with the Magistrate's sentiments on the subject.

4. With reference to the 10th and 11th paragraphs of the Magistrate's letter abovementioned, the Court direct me to observe that the rule contained in Clause 1st Section II. Regulation III. 1812, does not, in their opinion, require the subsistence money of witnesses to be lodged, until the Prosecutor is desirous of taking out process to procure their attendance, and that the consequence, noticed by Mr. Shakespear, may be obviated by not summoning the witnesses until the Magistrate or his Assistant be prepared to take up the case.

5. It appearing that you have already called on the Magistrate of Zillah Purnea for an explanation regarding the persons stated in his report for May, to be under charge of the Nazir, no further orders are at present necessary.

6. The Court conclude that you have issued similar instructions to the Acting Magistrate of Dinagepore, with respect to the six persons who appear from his June Report to be detained in the same irregular mode. But if not, you are desired to do so.

7.

7. The original papers received with your letter of the 17th July, are returned herewith, as requested by you. Copies of them have been kept for the records of the Court.

I am, &c.

(Signed) M. H. TURNBULL,
Register.

FORT WILLIAM,
the 8th September, 1817.

(True Copies,)

M. H. TURNBULL,
Register,

APPENDIX. E.

Of the manner of swearing and requiring an Oath.

An oath, unless it be taken in the name of God, is not, according to many of the learned, worthy of credit or legal.* Some of the moderns have however, with advertence to the degeneracy of the present age, determined that an oath with the mention of Quoran is lawful. All the ancient lawyers are agreed upon this point, vizt. the illegality of administering an oath to any person excepting the defendant.† The administering an oath to the Plaintiff or to the witnesses, is utterly void and out of use. Indeed should the King himself ever issue the orders to the Quazee so to do, it would be incumbent on the learned about him to admonish and request him to abstain from enforcing such an illegal order.—Some few of the moderns considering the present depravity of the world, have allowed that the Quazee may (instead of adopting the prescribed mode of Purgation) administer an oath to a witness; but if the witness refuse to take the oath, the Quazee can by no means exact or enforce it. The oath then taken in the name of God, which is legal in the opinion of *all the learned*, or the oath with mention of the Quoran, lawful according to some of the moderns, would stand thus: "By God, I saw such and such a thing."—"By the Quoran, I saw &c." It is lawful also to desire the swearer to corroborate his oath by reciting the attributes of God; such as his purity or greatness, ‡&c. or by repeating the qualities of the Quoran. The placing the Quoran in the hand or on the head of the witness, or desiring him to uncover his feet during the time of the administration of the oath, are all practices unauthorized by the Law; at the same time they are not positively forbidden. It may then be observed, that for a due administration of an oath, it is absolutely necessary that the form be accompanied by the mention of the name of God or of the Quoran, and that it is by no means essential that the witness touch the book or have it before him. There is no harm however in these last practices, if they are intended to operate on the minds of the vulgar. In the present forms of the oath, as it is administered daily by the Moollah Quorances or of the Hulufnama, there is no distinct mention made of the name of God or of the Quoran, and neither to the Moollah Quoranees nor to the Moonshees employed by Government is any neglect imputable for not administering the oath as they are directed to do by the Regulations.

From the foregoing premises.

The

* Vide Hedaya. p 77 vol. 3.
† Page 69, vol. 3. Hedaya.
‡ Vide Hedáya, page. 78. vol. 3.

The want of impression made on the minds of witnesses, is not merely attributable to the little effect produced by the admonition which precedes the requisition of their evidence, or to the Moollah Quoranees being in general low and ignorant men, and incapable of giving the due admonition.

The mention of the name of God or of the Quoran would undoubtedly be calculated to produce effect; particularly on the minds of true believers. Others who find no hesitation in giving false evidence, would feel no repugnance in perjuring themselves. Men who obey the dictates of honesty, virtue, &c. are not likely to violate truth either with or without taking an oath.

In short, the oath which is effective and worthy of credit, is that wherein mention is made of the name of God or of the Sacred Book. From persons who may be suspected of being false witnesses, a mochulka, in addition to the oath should be taken; and if the persons who administer the oath, are capable of making a proper exhortation and explaining themselves properly, and giving such admonitions as should set forth the dreadful consequences resulting from false testimony and perjury, a more forcible impression would doubtless be made. Few people being found who perform the ablutions and purification necessary, and enjoined previous to touching the Quoran, they should be ordered before handling it, to go through the purification required. As in the different Zillahs moreover, men are always to be found of excellent repute, and of noted good name, as well as others of the opposite description and infamous—It should be the endeavour of the superior authorities to ascertain their respective characters, before the trial of any cause whatever, and when no interest was concerned in making such inquiry, and the names of those whose characters had undergone this investigation, ought to be registered, in order that all doubts or suspicion regarding them might be perfectly cleared up, when it should be found necessary to call on them for their evidence.

(A true Translation,)

(Signed) P. M. WYNCH,

(A true Copy,)

M. H. TURNBULL.

Register.

APPENDIX. E.

APPENDIX. F.

BENGAL SECRETARIAT LIBRARY

APPENDIX. F.

Answer of the Pundits to the reference made to them on the 9th June 1814, respecting the mode of administering Oaths to Witnesses, &c.

It is proper that parties and witnesses should be sworn separately by Brahmanas qualified to try the case, and appointed by the King. They should be admonished regarding the advantage of declaring the truth, and the punishment attendant on falsehood according to the text of the Puranas, and interrogated accordingly. The Witnesses should be barefooted and bareheaded at the time of giving evidence, and with the right hand uplifted; taking at the same time a piece of Gold, some Cow-dung, and Koosa Grass, should give their evidence separately.

Authorities cited in support of this opinion.

1st. The text of Vrihaspate. Witnesses having taken off their shoes and turbans and extended their right hands, should take Gold, Cow-dung, and Koosa Grass, and declare the truth.

2nd. The text of Nareda. Witnesses who have any knowledge of the case, should first purify their hearts by taking the [required] oaths, and then give their evidence separately.

3rd. Another text of the same Author. Witnesses should be sworn and admonished regarding the advantage of speaking the truth and punishment of falsehood, according to the spirit of the texts of the Puranas.

4th. and 5th. According to the text of Menu and the commentary thereon. The Brahmana appointed by the King to take the evidence of Witnesses in Court, ought to interrogate them in the presence of the parties mildly, and not in a threatening manner.

Rules for the discovery of Witnesses giving false evidence according to the Shasters.

On this subject, Vrishpoti declares a false witness may be discovered from his countenance, his voice, and demeanour. Being conscious that he is giving false evidence, he speaks confusedly, and runs about from one place to another. He coughs and spits without any occasion. His breath is quick and hard. He shuffles his feet about, and shakes his shoulders and hands. His colour changes, his forehead perspires, and his lips become parched. He looks at the sky obliquely and speaks as if

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he were in a hurry and when not required. When such signs are observed, a Witness may be suspected to be false and ought to be fined accordingly.

Section V. Regulation L. 1803, prohibits "the administering of such oaths described in the Hindoo Laws as are of the nature of ordeals, and rest the proof of "facts or of evidence on the immediate or future contingency of evil to the person "sworn, his family or property."

The trial by *Dhurm* and *Adhurm*, from which no injury can proceed, is not prohibited, and is advisable as shewing at once whether the Witness speaks true or false.

The method of it is this. Make a silver image of *Dhurm*, * or draw a resemblance of it on Bhoj leaf or Cloth: then make an iron or leaden image of *Adhurum* † or draw its resemblance in the same manner. Cover the two images separately with Cow-dung or Clay, in such a manner that the person to give evidence cannot distinguish them. When he has given his evidence, he is to lift up one of them. If he lifts up *Dhurm* his evidence is true, if *Adhurum*, it is false. The image of *Dhurm* should be white, that of *Adhurum* black.

(A true Translation,)

P. M. WYNCH,

Deputy Register.

* Truth.

† Falsehood.

REMARKS of the COURT of SUDDER DEWANNY ADAWLUT on the proposed Regulation, "for the re-establishment of the Mal-Adawluts; and for vesting the Collectors of the Land Revenue with powers to hear and determine all Suits for Rent, and for arrears of Rent, and for undue demands and exactions of Rent, and for wrongs sustained in cases of distress, for the recovery of arrears of Rent."

THE declared object of this Regulation is "to facilitate the decision of all questions relative to Rent;" and with this view it is proposed to take from the established Courts of Judicature all cognizance of the suits specified in the Preamble and 2d Section; and vest the same exclusively in the Collectors of the Land Revenue; subject to an appeal from their decisions to the Board of Revenue, in the Provinces of Bengal and Orissa; the Commissioner of Behar and Benares in those Provinces, and the Board of Commissioners in the Western Provinces.

The specification in the preamble of the Suits to which the Regulation has reference, corresponds with that given in the Title. But Section II. prohibits the Civil Courts from receiving any Suit, Appeal or motion, in the following descriptions of causes.

1st. "For any matter or thing, relating directly or indirectly to the Public Revenue; except where Government, or a Collector of Revenue or of Customs, may be a party."

2dly. "Concerning any demand of rent by Zemindars, Talookdars, Chowdries, or other Landholders, Farmers, Mootahids, Wadadars, Sureties, Aumils, Tehsildars, Etmamdars, or other persons employed in the collection of the Public Revenue, or their Under-farmers, Sureties, inferior Landholders and Tenants, or their Agents and Collectors, and others from whom Rent or Revenue may be due to them; nor any demands for Rent or Revenue on persons employed in the collection of them, officially, or hereditary, in the several gradations, from the Zemindars to the Ryots, or immediate occupants of the soil."

3dly. "Any complaint of Ryots and other persons of the above-mentioned denominations, against the persons to whom they pay Rent or Revenue, in the different gradations upwards, for irregular or undue exactions; and, for illegal, or excessive distress of goods or crops, under pretence of an arrear of Rent; and for the non-delivery of Pottas, and Dakillas, viz. leases and receipts."

4thly.

4thly. "Concerning any adjustments between Zemindars, Talookdars, Chowdries, or other Landholders, with their Sureties, Farmers, inferior Landholders, Tenants, Agents and Collectors; or any claim of such Sureties, Farmers, inferior Landholders, Tenants, Agents and Collectors; or any claim of such Sureties, Farmers, inferior Landholders, Tenants, Agents, and Collectors, the Zemindars, Talookdars, Chowdries or other Landholders, relative to disputed accounts of Rent."

In Section III. it is provided that "all Suits described in the preceding Section, shall be brought before the Collector of Revenue, in the District where the land to which they relate, may be situated; or in which the Defendant may reside. And the said Collector shall be guided in the receipt and trial, and decision of such Suits, and in the execution of the judgments on such Suits, by the same rules as are prescribed to the Zillah and City Courts, except where modified by this Regulation."

It is not explained, whether the rules adverted to in this Section are meant to be those prescribed in regular Suits; or such as relate to the Summary process now authorized, by Section XV. Regulation VII. 1799; Section XIV. Regulation V. 1800; and Section XXXII. Regulation XXVIII. 1803. But an explanation upon this point will be requisite, if the Regulation be enacted, as the special rule of proceeding against the Defendant, in the Summary cases last mentioned, is very different from the ordinary mode of procedure in Regular Suits prescribed by Regulation II. 1806.

In considering the descriptions of causes which it is proposed to exclude from the future cognizance of the Civil Courts, it appears proper to distinguish such as relate to the Public Revenue of Government, and to complaints of unauthorized acts against the Officers employed in the collection of the Public Revenue; from those which have immediate relation to the claims of Landholders or Farmers of land, on their Under-tenants; and complaints of the latter against Landholders and Farmers; or their Agents.

The existing Regulations provide fully for the punctual realization of the Public Revenue, and have invested the Officers, to whom this duty is entrusted, with powers for the execution of it, without having recourse to the Courts of Judicature in the first instance; but subject to responsibility, on a legal procedure against them in the local Civil Court, for any act done in their official capacity, in opposition to the Regulations prescribed for their guidance.

This being an essential principle in the system of internal administration, financial, as well as judicial, which was established in 1793, as declared in the Preambles to Regulations II. and III. of that year; and provided for in Section X. of the latter Regulation; as well as in various Regulations since enacted; and no reason whatever, for a dereliction of it, or deviation from it, being stated in the papers under

der reference to the Court, the introduction of the first description of Suits specified in Section II. of the proposed Regulation, viz. "relating directly or indirectly to the Public Revenue," appears unnecessary and objectionable.

It cannot be deemed, in any degree, necessary for the professed object of the Regulation, "to facilitate the decision of questions relative to Rent;" and it may be objected to the terms, though not perhaps to the intention of the Section referred to, that they exclude the judicial cognizance, in the Civil Courts, of complaints against Assistants to Collectors, and Native Officers employed in the collection of the Public Revenue, for unauthorized exactions, unless Government, or a Collector of the Land Revenue or Customs, be made a party.

The words "*or other persons employed in the collection of the Public Revenue*" appear also to be unnecessarily and inaccurately introduced in the second description of Suits noticed in Section II. of the proposed Regulation; viz. "concerning any demand of Rent by Zemindars, Talookdars, Chowdries, or other Landholders, Farmers, Mootahids, Wadadars, Sureties, Aumils, Tehsildars or Etmamdars, on their Under-farmers, Sureties, inferior Landholders, and Tenants; or their Agents, and Collectors, and others from whom Rent or Revenue, may be due to them."

This specification appears sufficient to include all demands of Rent, on the part of Landholders and Farmers of land, upon their Under-tenants and Agents, without mention of "other persons employed in the collection of the Public Revenue;" though it may be proper to include a distinct provision respecting the Native Officers employed in settling and collecting the rents of Ryots, and other Under-tenants, in Estates held khas, or under attachment; or managed by the Collectors, and their Officers, in behalf of disqualified Landholders. In such cases, His Excellency the Governor General in Council has expressed his opinion, that "the Collectors "must themselves be considered in a certain degree parties in the Suits."* It would not therefore be consistent with established principles of justice, that complaints of exaction, against the Native Officers employed under the Collectors in these cases, should be excluded from judicial cognizance, before a disinterested tribunal; whatever exclusive jurisdiction it may be deemed proper to vest in the Collectors, with respect to Suits between Landholders and Farmers of land, and their Tenants, to which a similar objection may not be applicable.

But even with this restriction of the proposed Regulation; viz. supposing it to be strictly limited to the Suits mentioned in the Title and Preamble, when instituted by or in behalf of Landholders and Farmers of Land against their Under-renters, Ryots, and other Tenants; or by the latter, against Landholders and Farmers, or their Agents; several reasons occur why the jurisdiction of the Collector, should not

* Letter from the Chief Secretary, to the Board of Revenue, dated 31st July 1813.

not be exclusive, and his decision subject only to a difficult appeal at a remote station, before one of the superior Revenue Authorities.

With a view to ascertain what number of Suits in each District, would fall within the jurisdiction of the Collector, as Superintendent of the Mal-Adawlut, supposing this Court to be re-established as proposed, the Judges of the several Zillah and City Courts were required on the 1st July last, to transmit the Statements specified in the accompanying Circular Instructions; and Abstracts of the Statements, furnished by them, as far as they have been yet received, are contained in the General Abstracts, numbered 1, 2, 3, 4, 5, 6, 7.

The Judges were at the same time, desired (in the 8th Par. referred to) "in the event of their seeing any objections against a transfer to the Mal-Adawlut of the whole, or any part, of the depending Suits relative to Land-Rent, or other matters formerly cognizable by that Court, to state the same for the information of the Sudder Dewanny Adawlut, and consideration of his Excellency the Governor General in Council."

Extracts from the answers of such of the Judges as have offered their sentiments on this subject, are annexed to these Remarks in the Appendix A.

The answers which have been received on the further points noticed in the 9th Paragraph of the Court's Circular Instructions abovementioned, are likewise extracted, for convenient reference, under distinct Heads in the Appendix, marked B. C. and D.

The principal objections, which have been stated by the Judges of the Zillah and City Courts, against the proposed transfer of Jurisdiction to the Collectors, are in substance, as follow.

First. That the present duties of the Collectors do not in many instances, admit of their undertaking the additional duty suggested; especially the full investigation which is required for the decision of causes not subsidiary to a further regular Suit in the Civil Courts; and that generally the Suits proposed to be made exclusively cognizable by the Collectors, subject to an appeal only to the Board of Revenue, Board of Commissioners, and Commissioner in Behar and Benares, would not be more speedily tried and determined by those authorities, than they now are by the established Civil Courts, viz. the Moonsiffs and Sudder Aumeens; the Zillah and City Registers and Judges; the Provincial Courts; and the Court of Sudder Dewanny Adawlut.

Secondly. That peculiar difficulties would be experienced in the Province of Benares, where there is only one Collector for three Zillahs; and in some of the other Districts where the Collector is not stationed within the limits of the Zillah; such as Zillahs Hooghly and Jungle Mehals, within the Collectorship of Burdwan, Zillah Beerbhoom, partly under the Collector of Burdwan, and partly subject to the Collector of Moorshedabad; Zillahs Backergunge and Dacca Jalalpore annexed to the Collectorship of the city of Dacca, where the Collector resides; and Zillahs Behar

har and Ramghur, under a Collector whose place of residence is the City of Patna.

Thirdly. That cases of affray are often intimately connected with contested claims to Rent; and the possession of land; and that the Judges and Magistrates, if excluded from all cognizance of the Suits proposed to be transferred to the Collectors, would be deprived of the means of knowing the origin of many disputes, and disturbances; their knowledge of which now enables them to settle such disputes; and assists them in maintaining the peace of the country.

Fourthly. That incongruous, and in some cases incompatible decisions may be expected, in the same cause of action, if the cognizance of all claims to a right of property, and right of possession in lands, be reserved to the Civil Courts; and all claims relative to the rent of lands, which often involve a disputed possession, or on the adjustment of which the right of possession, under leases and limited tenures, must frequently depend, be made exclusively cognizable by the Collectors, and other Officers of the Revenue Department.

Fifthly. That the Collector from his official situation, and the nature of his principal duties, may be supposed to have a bias on his mind, to support the interests and claims of the Landholders and Farmers, who pay Revenue to Government; and the Ryots and other Under-tenants of land, would not therefore have the same confidence in his decisions, as in those of a disinterested Court of Judicature, unconnected with the assessment and collection of the Public Revenue.

Sixthly. That the proposed delegation of judicial powers to the Collectors is at variance with the principles declared in the Preamble to the Regulation, by which the Mal—Adawluts, or Revenue Courts, were abolished, viz. Regulation II. 1793, although the reasons of policy which then operated, are still in force, especially against an exclusive jurisdiction of the Revenue authorities, independent of all revision and control by the established Courts of Civil Justice.

Of the foregoing objections, the first and second, which respect the incompetency of the Collectors in many districts, to investigate and decide the whole of the suits proposed to be made cognizable by them, with less delay than is now experienced in the Civil Courts, appears to be corroborated by the accompanying Statement No. 8, extracted from the Abstracts before mentioned, Nos. 1, 4, & 5.

This Statement shows that, in the Zillah of Burdwan alone, independently of Zillahs Hooghly, the Jungle Mehals, and part of the Zillah of Beerbhoom, which are also included in the Collectorship of Burdwan, the number of Summary and Regular Suits, relative to demands, exactions, or arrears of Land Rent, instituted in a twelve month, viz. from the 1st July 1815, to the 30th June 1816, was as follow.

Summary Suits, ...	2055
Regular Do. before Moonsiffs,	1439
Do. in the Zillah Court, ...	2493

In Zillah Nuddea the number of Summary Suits, relative to Land Rent, instituted during

during the same period, was 1317; and the Regular Suits, before the Moonsiffs or in the Zillah Court, 390.

In the 24 Pergunnahs the number of Summary Suits amounted to 547; the Regular to 1508.

The aggregate number of Suits, of both descriptions, as specified in the statement, appears also to have been considerable in the following districts, viz.

Chittagong,	....	....	1606
Purnea,	....	....	1398
Moorshedabad,	....	....	1153
Tipperah,	....	....	963
Tirhoot,	....	....	3272

In the Bareilly Division, the number of Suits instituted in the year referred to, appears to have been very inconsiderable. But in the Zillahs which compose the Benares Collectorship, the aggregate of Regular and Summary Suits was as follow.

Benares City,	.....	.....	575
Ghazeepore,	.....	.....	296
Juanpore,	.....	.....	——
Mirzapore,	.....	.....	236

In the city of Patna, and Zillahs Behar and Ramghur, which are also under one Collector, the following number were instituted.

Patna City,	.....	....	154
Zillah Behar,	...	.....	566
Zillah Ramghur,		.....	173
			893

The above detail is sufficient to shew the impracticability of a single Collector's duly investigating and determining, in every District, the whole of the suits regarding demands, arrears, and exactions of the Rent of Lands, which may be expected to arise within his Collectorship. If therefore it be judged expedient to vest the Collectors with exclusive judicial powers, according to the proposed Regulation, it appears indispensably necessary, that in some districts, additional Collectors, or assistants, with the powers of Collectors, should be employed for the due performance of this duty; and also that an Establishment of Native Commissioners, should be appointed to act under them, for the trial of part of the Suits which are now heard and determined, in the first instance by the Moonsiffs and Sudder Aumeens, acting under the Zillah and City Judges. This indeed is fully admitted by the Board of Revenue, in their letter to Government, under date the 23rd April last. In the 3rd paragraph of that letter, an explicit opinion is given, that even in the Lower Provinces, a Collector cannot allot a sufficient portion of time, for the speedy trial of the Suits referred to; and after stating the process

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which must be gone through on a Summary Inquiry, it is added—"That one person therefore, can in any reasonable time get through the numerous Suits that must come before him, seems wholly impracticable."

The accompanying Abstract No. 6 affords grounds for a similar conclusion, against the possibility of the Board of Revenue, Board of Commissioners, and Commissioner for Behar and Benares, being able to examine the proceedings of the Collectors, and to decide upon the merits, in all appeals, which it may be presumed, would be made to them, if the Summary judgments of the Collectors were not subsidiary to a Regular Suit in the local Civil Court; unless the remote situation of the place of appeal should operate in general, to prevent its being preferred; which on a general view of the subject, would imply a more serious objection to the proposed arrangement, than an accumulation of undecided appeals.

On the subject of the *Third* objection above noticed, the Judge of Zillah Nuddea (Mr. Paton) after stating his reasons for having made few references to the Collector of that District, and the importance towards maintaining the public tranquillity, of a prompt and Summary decision in all Suits relative to Land, adds—"There are few cases of a Criminal or Civil nature, which have not some connection with differences and disputes concerning Revenue; and the peace and happiness of the people depend upon the Security they have against the rapacity and exactions of their Landholders. Crimes proceed from these causes: for where the Zemindars are over-awed by the Courts of justice, and kept in proper check and discipline, the Police must be improved. Accordingly, I humbly conceive, that a total transfer to the Collector of Revenue matters, would weaken and distract the authority of the Court; and deprive the Judge and Magistrate of the most effectual means of protecting the cultivators of the soil from ruin and oppression; and of supporting an efficient Police."

1. The Judge of Cuttack (Mr. Impey) supports this reasoning; and several other Judges and Magistrates consider it indispensably necessary to the Police of their jurisdictions, that the Summary Process allowed by the Regulations in force, in cases of forcible dispossession from land; or disturbance in the actual possession, as described in Section V. Regulation VI. 1813; should remain in the hands of the Judicial officers. But admitting the expediency of this measure, which would not be affected by the proposed Regulations; and also that Mr. Paton's argument is applicable to the supposed "total transfer to the Collector" of all matters relative to the Rent of Land; it does not equally apply to a Summary adjustment of Rent disputes by the Collector, when the parties interested may prefer their Suit to him for that purpose; or the Judge may think it advisable to refer a disputed Rent account to the Collector for adjustment; especially if the Summary decision be not conclusive; but subsidiary to a Regular Suit in the Civil Court.

Mr. Robertson, Acting Judge of the City of Patna, has chiefly brought forward

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the fourth objection above stated. He observes, "it is impossible to avoid anticipating considerable confusion from the re-establishment of the Mal-Adawlut; for whatever portion of Civil business may be transferred to another authority, that respecting possession of Land must remain with the Judge; or the peace of the District cannot possibly be preserved. Notwithstanding all that has been done to establish uniformity of judicial proceeding throughout the Country, the practice of every Court is still, I believe, found to vary considerably, according to the opinion and bias of each successive Judge. As long however, as one individual presides, some consistency must continue to be preserved. But when by the proposed distribution of Civil business, claims for land shall be determined by one person, and those for produce by another, what incongruous decisions may not be expected to be passed. Nor will this apparently be the only difficulty that will arise; for as the real object of many Suits, instituted for the ostensible purpose of realizing arrears of Rent, is to establish a disputed right of possession, the same point may, under different forms, happen to be litigated in separate Courts; and the two decisions may prove incompatible with each other."

The Judge of Tirhoot (Mr. Fleming) concludes a paragraph to the same effect, relative to the opposition between conflicting orders of the Judge and Collector, if the latter's authority be not subordinate to that of the former, by observing—"This might often occur; as the practice of bringing forward collusive claims for balances of Revenue, for the purpose of obtaining possession of Land, is not, I am inclined to think, uncommon all over Behar."

It cannot be doubted that in the event of any independent and exclusive jurisdiction, in Suits relating to the Rent or possession of Land, being vested in the Revenue authorities, it would be very difficult to define the Suits thus excluded from the cognizance of Civil Courts, so exactly, as to prevent occasional if not frequent, collision and embarrassment. This was experienced under the Judicial system established in the years 1780 and 1781:* and formed one of the grounds on which it was deemed expedient to unite the powers of Collector, Judge and Magistrate, in the same person, by the Regulations of 1787.

If it should be ultimately determined to vest the Collectors with exclusive jurisdiction, according to Section III. of the proposed Regulation, the following addition to that Section, which is suggested in a paper transmitted to the Court, with the Draught received from the Board of Commissioners, appears to be highly expedient and requisite—viz. "Provided however, if it shall appear to the Collector, in the progress of the Inquiry, that the claim preferred involve the question of a right of possession, or right of ownership to the Lands, the rent or produce of which

* See "Remarks on the mode of administering justice to the Natives in Bengal; and on the collection of the Revenue." By Sir J. Shore. Recorded on the proceedings of Government in the Revenue Department, 29th May, 1785.

which may be litigated, the Collector shall dismiss the Suit with Costs; leaving the Plaintiff to seek his remedy by the institution of a regular action in the Zillah or City Adawlut."

It would further be advisable to provide, that no decision or order of a Collector, Board, or other Revenue authority, should bar or impede a Regular Suit in the Civil Courts of judicature, for the possession of Land, or a right of property or interest therein, nor in any wise affect the judgment to be passed on such Suit, according to the laws and regulations in force.

If however the Collectors be vested only with a subsidiary power of adjustment, on a Summary inquiry; leaving parties dissatisfied with their decision, (or with that of the Board of Revenue, Board of Commissioners, or Commissioner in Behar and Benares, in the event of a Summary appeal to either of those authorities.) to institute a regular Suit; and consequently if the judgments and orders of the Revenue Officers be, in all cases, made subordinate to those of the Judicial Officers, on a fuller investigation, it would materially promote the objects of the Summary Process, committed to the Collector, if he were authorized to adjust the right of occupancy, as well as the question of Rent, in all cases wherein the former may clearly depend on the latter, carrying his adjustment into effect, unless good reason be assigned against it, to the satisfaction of the Judge of the Zillah or City Court, until it be set aside by a regular decree of that Court; or of the Court in which a Regular Suit in the case may be properly cognizable.

On the subject of the *Fifth* objection, viz.—a real or supposed bias on the Collector's mind, in the decision of Suits which are directly or indirectly connected with the Land Revenue of Government, it is observed by the Judge of the Jungle Mehals (Mr. Hoppner,) that "the Collectors do not appear to be the proper Arbitrators to settle the contested rights between the Zemindars, and their Ryots and Dependants. These Officers, from a laudable anxiety to realize the Government Revenue, may be induced to overlook the means which the Zemindars may employ to satisfy their demands against the Ryots."

The Judge of Bareilly (Mr. Dumbleton) in considering the expediency of vesting the Collectors with original jurisdiction, remarks—"I should not apprehend any public inconvenience from vesting the Collectors with an original jurisdiction. But I conceive that an appeal should lie to the Judge from his decisions; and that every facility should be given to such appeal: because in these Malgoozary Suits, the Collector, however enlightened, however honorable, will be somewhat biassed towards such measures as will ensure the collection of the Revenue; and such are not always the most favorable to the interest of the lower orders. The inferior Revenue Officers are often indirectly concerned in these Suits; and on that and other accounts it might be worth considering, whether an option to the Plaintiff, of instituting his Suit either in the Collector's, or Judge's Court, would not be attended with advantages. This might do away the necessity of Appeal." But

But the fifth and sixth objections are stated, in the strongest terms, by the Judge of the city of Benares (Mr. W. W. Bird,) and his Register (Mr. R. M. Bird,) stationed at Chazeepore.

The former, after citing the Preamble to Regulation II. 1793, adds—" Such " were the objections to the Mal-Adawluts in 1793, and is there a Public Officer " of any experience in the Country, who will venture to affirm, that they have not " at least as much force at the present moment. Have the Collectors fewer financial " duties than formerly? Do they possess more the confidence of the Public? Are " cases no longer liable to occur in which they must feel interested in the result of " their own decisions? Or do their financial occupations less disqualify them for be- " coming administrators of the Laws? Unless all these questions can be answered in " the affirmative, the Government exposes itself, by re-establishing these Adawluts, " to the reproach cast upon it, when the attempt was made to revive the House Tax, " which like the Adawluts in question, had been formerly abolished—We need not, " said the people, take the trouble to bring forward arguments against it. You " have yourselves, in the face of the whole world, pronounced its condemnation."

" *Have the Collectors fewer financial duties than formerly?* It is well known that in three, out of the six Divisions of the Country, namely Patna, Benares and Bareilly, the Revenue Officers, so far from having little to do, have duties to perform not less laborious than the judicial. To these duties the re-establishment of the Mal-Adawluts will superadd, what, even had they to attend to nothing else, would alone be impossible for them to perform; the number of Suits for Land Rent, Regular and Summary, now depending in the City Court, amounts to 712. Supposing there be only the same number depending in each of the Zillah Courts of Juanpore and Mirzapore, the Collector of Benares would commence his proceedings in the Mal Adawlut with a file of 2136 cases, and the number annually instituted, taking the average of the last twelve months, would probably exceed 1900."

" *Do the Collectors possess more the confidence of the public?* From what cause I cannot pretend to say, but they are now considered by the people in no other light than that of mere instruments for raising Revenue. To swell the amount of their collections, is, in the public opinion, the sole object of all their endeavours. The people are not to be persuaded, that where the interests of Government are at stake, the judicial powers proposed to be vested in the Collectors, will be exercised with impartiality."

" Nor was it ever more necessary than at present, that the hands in which the cognizance of cases of this nature is placed *should be wholly uninterested in the result of their own decisions.* The estates under control of the Revenue Officers are more numerous than ever; and it must frequently happen that their interests, as Collectors, are in direct opposition to their duties as Judges. To expect men in general to be

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so animated by a love of justice, as to sacrifice their own interests for the sake of it is to entertain a more liberal opinion of the purity and honor of mankind, than the benevolent author of the Regulations of 1793, considered them entitled to."

"From all these circumstances it necessarily results, *that the financial occupations of the Collectors continue wholly to disqualify them for administrating the laws*, in regard to landed property and the rights attached to it."

"But were the Collectors ever so well qualified for this purpose, a difficulty arises in regard to their local situation in their respective Districts, which appears to be insuperable. Take for instance the Collector of Benares. This authority extends over the whole of Benares, Juanpore and Mirzapore, in each of which District is a Judge and Magistrate. Divest the judicial authorities of the cognizance of Suits for Land Rent, and the parties in every dispute of this nature, however small the amount, must go to the Collector's place of residence, the distance of which from each Pergunnah will be found subjoined, before an authority can be found by whom their disputes may be decided. The Inhabitants therefore, of every Pergunnah, except those immediately surrounding the Sudder Station, would have to travel many miles for the adjustment of these disputes which are for ever recurring, and which might at their own doors be adjusted by the Moonsiffs, the amount at issue being in almost all cases, within the cognizance of these Officers. But who will encounter the inconveniences of a long journey and absence from home, in order to repair to a tribunal, in which presides an authority, that inspires no confidence—sooner than seek redress in such a mode, the parties will have recourse to the sword."

"This objection applies, not only to Benares, but to every District throughout the country. In every District there are Pergunnahs far removed from the Collectors' residence; and in every Pergunnah, trifling disputes about Land Rent perpetually occur. Disorder therefore, and disturbance, must result. Nothing will be settled without a battle. Insecurity, and depreciation in the value of landed property will ensue: and then follows of course a defalcation in the Public Revenue. Without the occasional employment of a Military force, neither the Collector will be able to realize the Public dues; nor the Magistrate to preserve the peace."

The following is an extract from the Report of Mr. R. M. Bird, Register and Joint Magistrate at Ghazeepore.

"Unless the Preamble to Regulation II. 1793, were erased from the Statute Book, how can the people reconcile the revival of an establishment mentioned therein, in terms of such just and unqualified condemnation, with a desire on the part of Government to promote their interests and their happiness.?"

"Even those who, long versed in the rules and practice of Revenue affairs, have attained by that path to fortune and distinction, and who may therefore be supposed to view that branch in the most favorable light; and whose acknowledged talents give additional weight to their opinion; have placed on record their sense of

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the unfitness of a Collector's Cutcherry for judicial investigations—'The discussion of legal rights,' says the author of the report of the well known Benares Commission, 'in a place where they are not cognizable, and by a domestic investigation precluding all the checks on private intrigue, which are imposed by the open procedure of a judicial litigation, has opened a wide door to corruption, among the Native Officers.' A Regulation may make legal rights there cognizable; but the removal of the other objections will be matter of great difficulty."

"It is to be observed, that it will still be by the discharge of his Revenue duties, that the Collector must look to rise to eminence and success. It is not in human nature to be free from bias towards that occupation, which most conduces to profit and credit. Neither is it to be supposed that Government would consider the declaration by a Collector, that he had been engaged in the discharge of judicial duties, as a sufficient excuse for an inconvenient defalcation in the Revenue. That his Revenue duties are already sufficient to occupy a Collector's whole time, is evident.—To preside in the Mal-Adawlut must then become the exclusive duty of the Assistant; or of some Native Officer. It is not difficult to conceive the consequence of entrusting this duty to a very young man, equally unacquainted with the course of judicial investigation, and with the nature of the tenures, individual habits, rights and privileges of the people, unable as he must be to understand the dialect of that class of men who cultivate the soil; and depending for all his information on a tribe of Officers, not merely venal, but probably having an actual interest at stake. The second alternative I need not dilate on."

"The large amount of land held by every description of the Native Revenue Officers in the names of their children, friends and dependants, gives rise to another serious objection. I presume the Regulation contains strict provisions, enforcing that the Officer presiding in the Mal-Adawlut, shall hold his sittings in an open Court, to be provided by Government, that the Officers of that Court shall be entirely distinct from those concerned in Revenue affairs, and that no Suit shall be tried there to which any of the Revenue Officers or their dependants may be parties. But intrigue and influence must necessarily in practice beat down these checks. The identity of the Mal-Adawlut with the Collector's Office will be studiously inculcated by those interested; and it is not to be supposed that the labourer, unaided, indigent, ignorant and passive, will dare to maintain his rights against wealth and power, and influence and authority; or what appears to him to be such; or will not suffer any endurable *quantum* of oppression, rather than provoke the unequal contest."

"I merely mention the obvious inconvenience resulting from the distance of the Collector's Court from the outlying districts of the Province, but it seems right to correct a misconception in this respect. I believe it is held out that the Land-holders

ders, having always business to transact at the Collector's Cutcherry, will find it convenient to have their Suits respecting Rent decided there. But it is to be recollected, that the cultivator, upon whom, by Regulation V. 1812, the onus of bringing the Suit must lie, has no business there. His business is with his plough, and can it be supposed, that he will lose his reaping and sowing season, for the following year, and go a distant journey, to contest a claim before a Court in which he has notoriously no confidence? I believe the immediate result of this measure will be a great diminution in the number of appeals to authority by the Ryots, against the aggressions of their land-holders; but I fear it will not, not by diminishing the sum of oppressions, but by barring the avenues to redress.—They will rather "bear the ills they suffer, than fly to others which they know not of."

On a general consideration of the objections last stated, with those before adverted to, the Court are of opinion, that they contain forcible reasons against the proposed re-establishment of the Mal-Adawlut, or Courts of Summary Process on matters relative to the Land Rents and Revenues, under the superintendance of the Collectors; with original, final and exclusive jurisdiction, subject only to an appeal from the Collector's decision, to one of the superior authorities in the Revenue Department.

This measure, as it respects the exclusion of matters cognizable by the Mal Adawlut, from the ultimate judicial cognizance of the established Civil Courts, differs essentially from the arrangement suggested by the Board of Revenue, in their letter to Government under date the 31st July 1813, and reported upon by the present Chief and second Judges of this Court, in their address to the Vice-President in Council, dated the 30th June, 1814, (paragraph 54 to 62;) to which they beg leave to refer.

The measure then proposed by the Board of Revenue, and concurred in by this Court, was, that the Collectors and their Assistants, instead of reporting their adjustments, in cases referred to them by the Civil Courts, for the determination of those Courts, after such revision as might be deemed necessary, should be empowered to determine, on a Summary inquiry, the cases referrible to them under the Regulations, leaving any party, who might be dissatisfied with their decision, to institute a regular Suit in the proper Civil Court.

A similar arrangement appears to have been contemplated by the Honorable Court of Directors who have discussed the question; "how far it might be expedient to employ the Collectors and those engaged in that line of service, in the settlement of disputes respecting Land-Rent between Zemindars and their Under-tenants," &c. in their judicial letter of the 9th November 1814; (paragraph 68 to 81,) and after adverting to the provisions for a reference to the Collectors, in Section XIII. Regulation VIII. 1794, and Section XXI. Regulation V. 1812, conclude with the following remarks.—"We must own that these Regulations as

they

they affect both Judges and Collectors, appear to us to be very imperfectly adapted to the objects they have in view; which in our opinion can only be effectually obtained by a provision which should enable the Zemindars on the one hand, by a prompt and Summary process, to realize their dues from the cultivators, and thereby fulfil their engagements with the State; and on the other hand, which should extend similar facilities for the protection of the cultivators from the exactions of the Zemindars. We are strongly inclined to think that by bringing this two-fold object under the *bonâ fide* cognizance of the Collectors, subject to the revisal of the regular Courts of Justice by way of appeal, in cases of sufficient importance, both descriptions of our Native subjects would be greatly benefited. But as the subject is one of great importance, we are desirous that you should take measures for collecting the sentiments of the Judges and Collectors upon it, as well as the more detailed ideas of the Sudder Dewanny Adawlut."

The Court of Sudder Dewanny Adawlut, on the fullest consideration which they have been able to give to the subject, concur fully in the sentiments expressed by the Honorable Court, as far as they respect a prompt and summary process before the Collectors, their Assistants, and such Native Officers, or Commissioners, as may be required to assist them in the performance of this duty, under distinct rules to be prescribed for their guidance.

But whether the summary judgment of the Collector should be open to a summary or regular appeal before the Judge of the Zillah or City Court, or to the institution of a regular original suit in that Court, (or in the Provincial Court, if the cause of action exceed five thousand Rupees;) appears to be a question of some difficulty.

In favor of an immediate appeal to the local Court, it may be argued, that the case would be sooner brought to a final decision upon its merits; that the proceedings held before the Collector, would be admissible as evidence on the appeal; and that the Judge would possess a more efficient control over the orders and decisions of the Collector, by a direct appeal; which would allow him to suspend the execution of any summary judgment or order, on sufficient grounds, until he could more fully investigate, and pass a final determination upon the merits of the case.

On the other hand, from what is stated by some of the Judges, in the accompanying Extracts, (marked B.) it may be apprehended, that unless great care were taken in the summary enquiry, and adjustment before the Collector, the appeal to the Zillah or City Court, would be very frequent, and if the Judge could not refer such appeals to his Register; (to which there might be objections considering the general relative standing in the service of the Collectors and Registers;) or to the Sudder Ameens, the number of appeals, in many Districts, would be more than he could try and determine.

From the Extracts referred to, it appears that, excepting Zillah Chittagong, where the Acting Judge reports the summary decisions, passed under the Regulations

tions in force, are "scarcely ever final," the adjustments made by the Collectors, in cases referred to them by the Civil Courts, and revised by the Judges of those Courts, are generally conclusive. But several of the Judges concur in stating that, if the decision were passed on the Collector's adjustment without a revision, many cases would be again brought forward by the institution of a regular suit.

It is then of importance whether the summary enquiry, which it is proposed to commit to the Collectors, be made open to an appeal upon the merits of the case to the Zillah, City, or Provincial Civil Court, or whether the Collector's summary judgment, on the merits of the suit preferred to him, be declared subsidiary to a regular suit in the proper Civil Court, that the inquiry should be as complete, as the nature of a summary investigation may admit, and particularly that it should not be dismissed on default, without investigation, where there may not be strong and sufficient reason for this procedure; which is stated to be now too prevalent, in cases referred to the Collectors.

The proposed summary appeal to the Board of Revenue, Board of Commissioners and Commissioner in Behar and Benares, appears to be expedient therefore, in all cases wherein a Collector may dismiss the claim preferred to him, on the ground of non-attendance, or other default, without investigating and determining the merits of the case, as well as when it may evidently appear from the perusal of a copy of his decision or final order which should in every instance specify the claim and answer, the particulars of the examination gone into, the documents or other evidence adduced by either party; and the grounds of determination, that the Collector has not made the proper investigation which the nature of the case admitted of and required.

Beyond this it may be doubted whether the superior Revenue authorities, (especially the Board of Revenue, whose jurisdiction extends over the Provinces of Bengal and Orissa) could find leisure from their other duties, to exercise the functions of an effective Court of Appeal.

Their remote situation must also prevent frequent appeals to them, except in cases of importance, and the objections stated against the Judicial capacity of the Collectors, in matters, connected with the Public Revenue, must be considered appealable, though in a less degree, to the higher authorities in the Revenue Department.

It is indeed urged by the senior Member of the Board of Commissioners for the Upper Provinces (in his letter of the 30th May 1815), that "the supervision of the controlling Board, unembarrassed by the formality of regular appeal, would tend to establish fixed principles; to prevent a deviation from them, and to maintain an uniformity of decision. The whole of the Revenue Department has a clear and direct interest in the maintenance of good faith and equity between Landlord and Tenant, and the Revenue Department alone can, generally speaking, acquire a competent knowledge of the subject."

But

But, although the Court are most ready to acknowledge the utility and importance of a general supervision of the Collector's proceedings in the Mal-Adawlut by the Board, to which he is subordinate, as far as may be practicable, they must express their opinion, that a regular appeal, or the institution of a regular suit, with a view to the more full and formal investigation of the merits of the case, is better calculated to establish and maintain fixed principles, than a summary process, unembarrassed by the prescribed formalities of a regular judicial procedure. The Court are also not prepared to admit, in opposition to the declared principles of policy, on which the Revenue Officers were divested of judicial powers, that they can, in every instance, be relied upon for a disinterested and impartial decision in matters of contest between Landlords, paying Revenue to Government, and their Tenants; or that there is any obvious or sufficient reason, why the Judicial Officers, Native and European, should not, if experienced in the frequent examination of such subjects, be as competent as the Revenue officers, to acquire a knowledge of them. At all events there will be no room for any doubt, or question upon this point, if the future advancement to the station of Judge of a Zillah or City Court be from that of Collector as suggested by the 2d Judge of the Benares Court of Circuit in his report of the 15th December 1815; and recommended in the fourth paragraph of the Resolutions of the Nizamut Adawlut, under date the 24th February last, to which the Court beg leave to refer. On the present occasion it appears proper to add, that the judicial experience of a Collector from having previously held the office of Register in a Civil Court, must tend materially to qualify him for a due exercise of his intended powers in the Mal-Adawlut, whilst at the same time, a knowledge of the business of the Revenue Department obtainable in the Office of Collector, would be of great use to the Judges of the Civil Courts in the investigation and decision of a large proportion of those suits brought into these Courts.

It may be added, that besides the various other duties which the controlling authorities in the Revenue Department have to discharge under the present Regulations, reports are made to them, for their determination, under Section XXXIII, Regulation IX. 1810, whenever goods may be detained by a Collector of Customs, on the ground of their being liable to confiscation, that in pursuance of Section XXII. Regulation X. 1813, an appeal lies to them from all judgments passed by the Collectors, or other officers entrusted with the charge of the Abkary Mehal, in the investigations reserved, to those Officers, (instead of the Civil Courts who had previous cognizance of such cases,) "respecting the illicit manufacture or sale of spirituous liquors, tarry, puchwye, or intoxicating drugs, including opium," and that a further provision for appeals to them is made by Section XCVI. Regulation XIII. 1816, a preceding Section of which (the 80th) vests the Collector of the Land Revenue, or other officer in charge of the Abkary Mehal, with exclusive cognizance, of "all suits, complaints and informations for the recovery of any fine or penalty recoverable

recoverable by Government, or by the informer, on account of the illicit cultivation of the poppy, the illicit manufacture, sale, purchase, importation, transportation, or possession of opium, excepting complaints or charges preferred against public officers for a breach of their official duty, under the rules of this Regulation; the cognizance of which is reserved to the Magistrates."

The Court have no information of the number of decisions passed by the Collectors, and other officers in charge of the Abkarry, or of the appeals received by the Board of Revenue, Board of Commissioners, and Commissioner in Behar and Benares, under the Regulations above noticed. But it may be observed that under the rules contained therein, and in other Regulations now in force, which empower the Collectors to adjudge, on summary process, penalties for illicit acts, receivable by Government, or by Informers, this branch of the Mal-Adawlut has been already re-established, although in some cases such penalties are still recoverable by a summary process in the Civil Courts (as expressly provided in Section XVII. Regulation XXVI. 1814, with respect to the penalty for filing, or furnishing copies of papers, not written on the prescribed Stampt paper;) and the following provision is contained in Section XXIII. Regulation X, 1810, the foregoing Sections of which Regulation empower the Collector of the Town duties to adjudge, on a summary inquiry, and levy by distraint, the prescribed penalty for clandestine importation of articles liable to those duties, as well as a fine, costs, and damages, for any unauthorized exactions by a Farmer of the duties, or his Servants. "If either party should "be dissatisfied with any order passed by a Collector adjudging any of the penal-"ties specified in the three preceding Sections, against any individual at the suit of "the Farmer, or vice versa, on the complaint of any individual against the Farmer "or his Servants; such party shall be at liberty to institute a suit in the Dewanny "Adawlut for damages on account of any injury he may deem himself to have sus-"tained thereby; but the institution of such suit shall not prevent the execution of "the order passed by the Collector as above directed, nor of any process of dis-"traint, which he may issue under the provisions of Section XIX."

If the intention of the above provision be to authorize a regular suit for damages against the Collector, or against the Collector jointly with the person who may have obtained a summary judgment from him; the Court are of opinion, that it would not be a good precedent to follow, in providing for a regular suit to set aside the judgment which may be passed on a summary process in the Mal-Adawlut, by the Collectors of the land revenue; under the judicial powers now proposed to be vested in them, for the adjustment of disputed claims of rent between the Landholders, or Farmers of land, and their under Tenants.

The rules contained in Sections XVI. and XVII. of Regulation VII. 1799, (and the corresponding provisions of Regulations V. 1800, and XXVIII. 1803) as well as the general rule in Section XXIII. Regulation V. 1812, whereby "any person

"who

" who may be dissatisfied with the judgments passed on the Summary inquiries," authorized by the abovementioned Regulations, are declared at liberty " to institute a regular suit for the more formal investigation of the merits of the case," would be applicable, in substance to the institution of regular suits in the established Civil Courts, by any persons dissatisfied with the summary decisions of the Collectors under the proposed Regulation; if this mode of procedure be deemed preferrable to an immediate appeal to the Civil Court, from the summary judgment of the Collector, which under the stated objections to appeals, it appears to be; as admitting of the full investigation of causes of small amount being made by the Sudder Ameens and Registers; whilst at the same time, from the expense and delay attending a regular suit, it may be expected that recourse will seldom be had to it, if the Collectors, under the direction of the superior Revenue authorities, are careful in making the summary inquiry committed to them.

It may be useful to cite in this place the following further Extract from the Report of the Judge of the city of Benares, in continuation of what has been already quoted.

" For the adjustment of differences regarding Land Rent, to the amount cognizable by the Moonsiffs, these officers are peculiarly well qualified. From residing in the Pergunnah, where these differences arise, they generally know something of both parties. All local information is immediately accessible to them. They are also themselves accessible, and the parties are willing to repair to them because they are near at hand; and having no arrears, are able to determine the questions submitted to them without delay. Their decisions are founded on the result of regular judicial litigation, are open to a regular appeal, before the Sudder Ameens; and subsequently to a special appeal before the Judge,"

" Such is the nature of the procedure about to be superseded by the re-establishment of the Mal-Adawluts. But it may be said, that the Collectors who are to preside in these Adawluts, are, from education and natural capacity, better qualified to understand these matters than the Moonsiffs. Be that as it may, the circumstances, in which the Collectors are placed, would counteract all the good effects that might be expected to result from their supposed superior qualifications: and when as must generally happen, the Collector is precluded from presiding by the pressure of his financial duties, the exercise of the judicial powers in question must devolve upon their assistants, no one will venture to say, I take it, that the assistants in the revenue line of the present day, young as they all are and unexperienced, would be qualified for the exercise of such powers."

" With a well regulated establishment of Moonsiffs, there is no occasion either for Mal-Adawlut or summary suits for Land Rent. Not only are the proceedings in these suits irregular, and often exparte; but so much is the Judge overloaded with business that although required by the Regulations to hear them previous to all o-

thers

thers, he is seldom able to dispose of them in a shorter space of time than is necessary for the trial of a regular suit. If any opinion may be formed from what has been done by the Collector of this District, under Section XXI. Regulation V. 1812, the delay in determining suits of this description in the Mal-Adawluts would be still greater. A regular action before a Moonsiff may be decided, both in the first instance and in appeal, sooner than a summary suit instituted at the same time before the Judge; required as the Judge is, in order to expedite the decision on such suits, to refer them to the Collector."

"Under these considerations I beg leave to submit the following propositions.

"*First.* That the proposed measure of re-establishing the Adawluts be not adopted.

"*Secondly.* That the rules at present in force for the trial of Summary Suits relative to demands, exactions, and arrears of land rent preferred by Landholders and Farmers of land against their under-tenants, in pursuance of Section XIV. Regulation V. 1800, and by Ryots and other under tenants of land against Landholders, and Farmers and their agents, under the provisions of Regulation V. 1812, and for damages on account of injury sustained from an irregular distress and sale of property for the recovery of alleged arrears of rent, be rescinded.

"*Thirdly.* That all suits of the above description, be instituted and tried according to the provisions in force for the institution and trial of regular suits before the Moonsiffs and in the Zillah and City Courts."

"As suits for Land Rent seldom exceed the sum of 150 Rupees, the Judge would by this arrangement be as effectually relieved as by the proposed re-establishment of the Mal-Adawluts. There would remain only special appeals from the decisions of the Sudder Ameens, and a very few original suits. Business would not, as is generally the case in summary actions, be done imperfectly; but a rule of enquiry would be observed in operation, and conclusive in result: a rule highly satisfactory to the people, because, without exposing them to personal inconvenience, it affords to all, the means of obtaining prompt and substantial justice."

The Court do not entirely accord in the sentiments above expressed, or in the propositions founded upon them. They are of opinion that the revenue officers may be usefully employed in the adjustment of rent accounts, between Landholders and Farmers of land, and their under Tenants; and that much time may be saved to the Courts of Judicature by a diligent and zealous performance of this duty on the part of the Collectors. They concur however on the expediency of relieving the Judges of the Civil Courts from the summary process in cases of arrears or exactions of rent, which is now made the joint function of the Judge and Collector, in a mode attended with inconvenience to the parties interested, and calculated, in some measure, to produce the delay which it was meant to obviate. The Court are also of opinion that the parties, whose just claims

are intended to be speedily heard and determined by the Summary jurisdiction of the Collectors, should in all cases have the option of instituting, in the first instance, a regular Suit in the proper Civil Court, if for any reason it be preferred. And they have already declared their Sentiments against rendering the summary judgment of the Mal Adawlut conclusive, when any person, dissatisfied with it shall be desirous of obtaining a fuller and more formal investigation, in the Dewanny Adawlut.

In pursuance of these sentiments, and in compliance with the intimation contained in the 4th and 5th paragraphs of Mr. Secretary Bayley's letter of the 14th June last, the Court submit the following suggestions for the consideration of his Excellency the Governor General in Council.

First. That Sections XV. XVI. XVII. XVIII. XIX. XX. and XXI. of Regulation VII. 1799 with the corresponding Sections of Regulations V. 1800, and XXVIII. 1803, together with such parts of Regulation V. 1812, or any other Regulation in force as authorize a summary inquiry and process in the Civil Courts of Judicature, in cases of claims to rent preferred by Zemindars, independant Talookdars, or other Landholders or Farmers of land or by any persons in their behalf, against dependant Talookdars, under Renters, Ryots, or other under Tenants of whatever denomination, as well as in cases of complaints preferred by Ryots, or other under-tenants of whatever description against Landholders or Farmers of Land, or their respective Agents, or any persons acting for them, on account of an excessive demand or undue exaction of rent, whether levied by distraint or otherwise, be rescinded.

Second. That new and detailed rules be established empowering the Collectors of the Land—Revenue to receive, try, and determine, by summary process any claims or complaints which may be preferred to them, within a limited period after the cases of action shall have arisen in the cases above noticed; as well as in any other cases which it may be deemed proper to bring within the summary cognizance of the Collector.

Third. That the jurisdiction of the Mal-Adawluts be declared to extend to all adjustments of rent accounts between Landholders or Farmers of land, or under Tenants of whatever denomination, with their sureties,; as well with any Agents or persons employed by them, in the management of Land, or the collection or payment of the rent of land, and to all other matters immediately connected with the demand, receipt or payment of the rent of land, whether Malgoozarry or Lakheraj; or with the rent of orchards, pasture grounds, and fisheries commonly denominated Phulkur, Bunker, and Julker; or with any other asset of the Land Revenue, not included in the Sayer, abolished. Also to complaints of the non-delivery of Pottahs, when demandable under the Regulations, or complaints of the prescribed receipts not being given for actual payment of Rent; and generally complaints of any deviation from the Regulations or from the established usage of the Country, or any violation

violation of subsisting engagements, in disputes respecting the rent and occupancy of land, between Landholders, or Farmers of land, and their under-Tenants of whatever denomination, provided that all cases of forcible dispossession from land, or forcible disturbance in the possession of land, involving an actual or expected breach of the peace, be considered exclusively cognizable, as heretofore by the Zillah and City Magistrates, and joint Magistrates; and that all claims to a right of property in lands by inheritance, purchase, gift, or any other title to ownership, as well as all claims respecting mortgages and conditional sales of land, and generally all claims to the possession of land, not connected with disputes between Landholders, or Farmers and their under-Tenants as above described, shall be cognizable only by the established Courts of Civil Justice.

Fourth. That in the proposed new rules, such part of the provisions now in force, for a summary process in the Civil Courts, as may be applicable to the intended summary process in the Mal-Adawluts, be re-enacted for those Courts, with any requisite alterations, and additions.

Fifth. That Sections IV. V. VI. and VII. of the Regulation proposed by the Board of Commissioners, which appear to the Court unobjectionable, be also included.

Sixth. That the ordinary appeal to the Board of Revenue, Board of Commissioners, and Commissioner in Behar and Benares, allowed by Section VIII. of the proposed Regulation, be restricted to cases in which the Collector may dismiss the suit preferred to him for non-attendance or on some other ground of default, without an investigation of the merits of the case; or in which he may neglect, or delay, without sufficient cause to proceed upon an enquiry in the suit, or may decide it without making such investigation, as the nature of the case shall admit and require. Provision may at the same time be made for the admission of a discretionary appeal, in special cases, which may appear to call for it, from an evident error of judgment in the Collector's decision, or otherwise.

Seventh. That in such cases the appeal to the Board of Revenue, Board of Commissioners, and Commissioner in Behar and Benares, be subject to the provisions stated in Sections VIII. IX. X. XI. and XII. of the proposed Regulation, except that instead of the decision upon the appeal being made final, on the merits of the case, it shall be final only, as to the sufficiency of the summary inquiry made in the Mal-Adawlut; and the judgment which it may appear just and proper to pass thereupon; leaving any person dissatisfied therewith, and desirous of a more full and formal investigation, to prefer a regular suit in the Zillah, City or Provincial Court, by which it may be cognizable under the general Regulations in force.

Eighth. That all persons having claims or complaints to prefer, of the nature of those made cognizable in the Mal-Adawlut and not wishing to avail themselves of the summary process authorized in that Court, shall be at liberty to institute their

claims

claims or complaints in the first instance, by a regular suit before the local Moonsiff, or in the Zillah or City Adawlut, or Provincial Court of the Division, according as the suit may be cognizable in these Courts respectively, under the general Regulations for the administration of Civil Justice.

Ninth. That persons dissatisfied with the summary judgment of the Mal-Adawlut, upon the merits of the suit, whether passed by the Collector in the original trial or by the Board of Revenue, Board of Commissioners, or Commissioner in Behar and Benares, on the authorized appeal to either of those authorities, be also declared at liberty to institute a regular Suit in the zillah or City Dewanny Adawluts or in the Provincial Court, if the amount of the cause of action be such as to render it originally cognizable by that Court.

Tenth. That in such cases the summary judgment of the Mal-Adawlut be carried into effect, notwithstanding the institution of the regular suit; unless the Judge, or Judges of the Court, in which the regular suit may be instituted, see special cause for suspending the execution of the summary judgment, and good security be tendered for performing the exigency of it, with interest at the rate of 1 per cent per mensem, on any sum receivable by it, in the event of its being confirmed on a further investigation of the merits of the case.

Eleventh That the summary judgments of the Mal Adawluts, when put in execution, be enforced by the Collectors with the aid of the Zillah or city Civil Court, in like manner as other summary judgments passed by the Collectors are carried into effect under the Regulations in force; but that a copy of the decision of the Mal Adawlut, be in all instances certified and transmitted to the Zillah or City Adawlut, for the information of the Judge of that Court.

Twelfth. That whenever a regular suit may be instituted in a Civil Court, with a view to set aside or alter, a summary judgment passed in a Mal-Adawlut, the proceedings held on the summary inquiry be called for, and such attention paid to them, in the trial and determination of the regular suit, as the ends of justice may appear to require, on due consideration of the case.

The Court are unwilling to extend these already lengthened remarks by a discussion of any of the other points noticed in the papers before them, and not immediately connected with the proposed Regulation for the re-establishment of the Courts of Mal-Adawlut.

They will only observe further, that no objection occurs to them against the concluding Section of that Regulation, except that it may be useful to add Forms of the Monthly and half Yearly Reports of decided and depending Causes, to be furnished by the Collectors, as well as to provide for the periodical transmission to Government of general Abstracts of such Reports

ports, and of similar Statement of the appeals received and determined by the Board of Revenue, Board of Commissioners, and Commissioner in Behar and Benares.

(Signed) J. H. HARINGTON,

J. FOMBELLE.

A true Copy,

M. H. TURNBULL,

Regr.

To W. B. BAYLEY, Esq

Secretary to Government in the Judicial Department,

FORT WILLIAM

SIR,

I HAVE the honor to acknowledge the receipt of a letter from you, dated the 23d of August 1815, and beg to submit the following observations on the address from the Honorable the Court of Directors, dated the 9th of November 1814, therein enclosed.

CIVIL JUSTICE.

1.—The sentiments of Gentlemen more conversant than myself in this branch of judicial administration, will be submitted to Government, and the few remarks which I venture to make under this head, are rather offered in obedience to the orders of Government, than with any confidence in the justness of my own opinions.

2.—The undue exactions of the Landholders, have naturally attracted the serious attention of the Honorable Court; the subject having been the constant theme of complaint since the period of the Company's Accession to the Dewanny. I believe it to be very desirable that we should interfere to protect the great body of our subjects from

Para. 13, (of the Honorable Court's letter) "The very fee "ble protecti- "on which the "present pro- "visions of the "Judicial Code "have afforded "or can in the "nature of

things afford to the Ryots against the injustice and extortions of the Zemindars."

from the grievous oppression to which they are at present subjected, but if a remedy is attempted, the evil should first be traced to its source.

3.—In the formation of a perpetual settlement of the Land Revenue, the amount to be paid by each Landholder to Government, was specifically stated, but no adequate precautions were at the same time taken for securing the rights of the peasantry, and thus the extent of the demands of the Zemindar on the Ryot never having been defined, the condition of the latter has been deteriorated under the operation of a system, which has obviously a tendency to destroy all gradations of tenantry, and to recognize in practice, no intermediate distinction between the Landholder and the labourer who works for daily hire.

Section of Regulation 1793.

4.—This untoward result which is avowedly contrary to the intention of the legislature, has proceeded not so much from the delays of investigation or the defects of the Laws, by which the Courts of Judicature are guided, as from the want of satisfactory or sufficient evidence to enable the Judge, even on the fullest enquiry, to afford redress in suits between the Zemindar and Ryot, much less to adjust the cause of dispute by summary process.

5.—A Ryot complains that his Zemindar exacts more from him than his just dues—to prove this charge evidence is necessary, but leases, agreements and receipts being wanting, the nature of the engagements subsisting between the parties cannot be ascertained, and if they should be forthcoming, the question at issue may turn on the Pergunnah rates of assessment formerly established on varieties of soil or productions of the soil, or on the standard of measurement used in the estate—points which can now be seldom proved. It frequently also happens that both Landlord and Tenant consider it

be for their respective interests that no written engagements should executed by either party.

6.—The old Pergunnah rates have for the most part been lost ith the abolition of the Canoongoes, and if known, would in the generality of cases be inapplicable to the present value of grain, or the rates of assessment levied by Government, from the Landolders.

7.—The general revision of the old rates, and the establishment throughout the country of new, is, I conceive, the first step necessary towards the just definition of the rights of the peasantry; the re-appointment of Canoongoes entirely independant of the Landholders, may aid in the formation, but the actual settlement of a table of rates, and the adjustment of the standard of measurement to be used in all agreements between the Landlord and Tenant, should be made in each Pergunnah by the Collector in person, on comparison of the Zemindaree papers, and such evidence as the Landholders and Ryots may produce. This would doubtless be a work of labour, but if one standard is assumed for an entire Pergunnah, the details would not be very considerable, and when once fixed, the Canoongoes would ensure an adherence to it in future.

8.—I have always thought that the provisions of Regulation V. 1812, which allow the property of a Ryot to be released from distraint on security, pending a summary enquiry, will, in time, if fully acted up to, constrain both the Landholder and Ryot to the execution of engagements, since the Ryot under these Rules can at all times stay the distress till a decision on the merits of the case, and the Zemindar under such circumstances must find it his interest to have engagements as the only means of enforcing his dues; the Ryot also under the operation of these rules will see that unless he has documents to produce, he cannot support his suit.

See his report to the Governor General, Paragraph 59, dated 25th April, 1815.

Para. 80. "And "in the year "1812, to have "passed a re-"gulation, in "which instead "of leaving it "to the Zillah "Judge to refer "*any* cases to "the Collector, "requires him "to refer *all* "for his re-"port."

9.—The Judge and Magistrate of Bundlecund bears witness to the practical benefits which have resulted from the provisions of Regulation V. 1812, in restraining the oppression of the Landholders. —The Regulation in question, though admirable in many respects is so far defective, that the enquiry is directed to be made by the Collector, and the decision by the Judge. This may be remedied by relieving the Judge and transferring the investigation and final adjustment of disputes between the Zemindar and the Ryot, to the Collector, as proposed by the Honorable Court, but it should be held in mind as above explained, that the difficulties at present experienced are not so much owing to the want of tribunals, or to the delays in investigation, as to the total absence of any tangible testimony, or fixed principles, to guide the Courts in the decision of these cases, from whence it has arisen that the modes of procedure adopted by the Courts in disposing of questions of this nature, are as various as the districts subject to their authority.

See Article VIII. Section IX. Regulation I. 1793.

10.—The recognition of the Zemindars proprietary right in the soil must ever oppose a serious obstacle to the attainment of an equitable adjustment between the Landholders and their Ryots. In the Ceded and Conquered Provinces, this obstacle may be gradually guarded against by the adoption of village settlements which, whether they are made in perpetuity or otherwise, provide more equitably for the general diffusion of comfort and independance, and hold forth the fairest prospect of security from malversation and extortion, by removing the middle men who are the extortioners, and bringing the cultivator of the soil, from whom all rents proceed, into more immediate contact with the Officers of Government.

Para. 18. "The "consequence "of which has "been that the "affrays and all "their atten-"dant evil and "outrages "which the Re-"gulation was "meant to pre-"vent have be-"come more "prevalent than "ever."

11.—The observations contained in Paragraph 14 to 41 inclusive, accord with the information then before the Honorable Court, but are not, I think, applicable to the present state of the Police in regard to affray, the prevalence of which offence has generally decreased during the last two years.

12.

12.—All that is essentially wanting for the suppression of outrages against the peace arising from the causes noticed by the Honorable Court, would I conceive be obtained by a rule to the effect recently proposed to Government.

13.—" To summon the parties disputing to the Foujdarry Court, " to bind them over to keep the peace, and to require them to appoint " arbitrators to fix land marks for the guidance of Police Officers in " supporting the award, until it might be set aside by a final decision " in the Civil Court."

See Police port for 18 Western P vinces.

14.—I greatly doubt the expediency of transferring the investigation and decision of summary suits, regarding boundaries, to the Collectors of the Land Revenue. The generality of cases of this description which at present occur, are connected with suits that have been previously decided by the Courts of justice, or which are now pending for decision, or the claims of the parties have in some way been brought before the Civil Court, and thus the merits of questions of this description are better understood by the Judges than they could be by the Collectors.

Para. 86. "W " direct th " disputes re " pecting " boundaries " be brou " within t " Jurisdiction " of the co " lector."

15.—It is desirable that disputes regarding land should be speedily investigated—at the same time, the greatest caution should be exercised, and it is I think questionable whether summary enquiries, even by the regular Courts of justice in cases of this nature, are safe or advisable, and whether possession should ever be assigned, excepting on the award of arbitrators, or in execution of a decree passed in a regular suit. I conceive it probable also, that if the Collectors are empowered to give possession on a summary enquiry, confusion will be occasioned, and the execution of the decrees of the regular Courts of justice be greatly impeded.

16.—The summary and exparte enquiry under which possession may be given by the provisions of Regulation XLIX, 1793, to persons bringing

bringing evidence to prove previous occupancy, has within my knowledge, been productive of very serious injury, to the just rights of individuals. Under the provisions of the above mentioned regulation, if a man in want of an estate, brings two or three witnesses to swear that he has been dispossessed, the party in possession may be ousted without a hearing, and can only be re-instated after a lapse of years, by a decision in a regular suit.

17.—The annexed paper on the subject of Punchayets, was given long since by an intelligent native, and as it will afford a general idea of the nature of these tribunals, I have thought proper to submit it with this address.

18.—The Judge of Etawa, Mr. Perry, in a letter addressed to this Office, on the 4th of June last, enclosing a statement of the number of civil suits depending in the several tribunals in his district on the 1st of December 1815, expresses himself in the following terms:

19.—" The very reduced number of these cases, being in all " one hundred and sixty-six, affords a pleasing proof of the success " of my endeavors to persuade the inhabitants of this district to pre- " fer in every practicable instance, the prompt and unsophisticated " justice of a Punchayet, to the tedious, expensive and uncertain alter- " native of a law suit in the regular Courts."

20.—" I beg leave to acquaint you, that the Office of Munsiff, " does not exist in this jurisdiction, nor in my humble opinion, is it at " all necessary."

21.—It is obvious from this statement, that under the present system, considerable assistance may be afforded to the Judge, by the encouragement of Punchayets; but at the same time it is apparent

from

a 44. " We conceive that the fittest and most proper agency we can primarily make use of in the distribution of civil justice, consists of those who form the more permanent and natural authorities in the interior of the provinces."

Appendix A

ra. 57. " The mundals or putwaries or at the option of the parties the punchayet, assembled under the authority of the former should be empowered to act as arbitrators in matters brought before them, by voluntary consent."

from the mode in which these native Juries are constituted, that they could not be employed for the decision of litigated questions, arising between the Landlord and Tenant.

22.—The Punchayets are assemblies elected by contending parties, or convoked by persons of influence, for the purpose of determining special questions, but no assembly of this description could be chosen, which in the nature of things could be expected to arbitrate with equity between the Landlord and his Tenant. The Munduls and Mocuddums, are for the most part subject to the Zemindar, and could not safely be employed in convoking the Punchayets in such cases, nor for the same reasons, would it be advisable to refer for the decision of these village authorities, complaints preferred against the Zemindars.

Para. 55. "It will "bring home "the administra- "tion of justice "to the very "doors of the "parties, and "thus relieve "them and "particularly "the common "Ryots from "that expense, "and vexatious "and some- "times ruinous loss of "time to "which they "are now sub- "ject, when they "seek Judicial "redress."

23.—The foregoing considerations render it desirable, that the Punchayets, if supported, should not be formally empowered to receive and investigate complaints in the first instance, or to take cognizance of disputes, without their being referred for their decision by the Judge, Register, or Sudder Aumeen.

Para. 54. "The "parties must "apply to the "Zillah Court "before the "arbitration "can proceed, "which (to say "nothing of the "distance of the "Judicial sta- "tion to which "he must re- "sor.) is in it- "self no incon- "siderable hin- "drance to the "obtainment of "Justice in this "way."

24.—If it is determined to have recourse to this form of trial, in aid of the existing system, the Judges, Registers and Sudder Aumeens might be empowered, to refer all claims preferred to them to a certain extent, excepting such as may be of the description last mentioned, or where any special and urgent reasons may exist for a different mode of procedure, to the investigation of a Punchayet; the same in ordinary cases to be convoked under a purwannah addressed to the head men of the village or place, requiring them according to the circumstances of the case, either to summon the members of the Punchayet named by the parties, or to convoke such persons as they may deem proper, for the investigation of the plaint.

25.—It would not, I think, be expedient to attempt prescribing any legal provisions for the conduct of these assemblies. Long established usage has rendered the custom of Punchayet familiar throughout the country, and as these Juries are not permanent, but merely collected together for the occasion, it could not be reasonably expected that they should conform to any thing beyond the local usages obtaining in their vicinity.

26.—As the proceedings of the Punchayets are not committed to writing, an appeal from their decisions must necessarily involve the examination of the members of the assembly; but, if their decisions to a moderate extent are rendered final, I should not on this account apprehend any unwillingness on the part of the inhabitants, to afford their assistance, when called on for this purpose, in cases of greater importance.

Para. 36. "This "incompetency "of the system "has very sen- "sibly served to "extend and to "create those "very disorders "in the body "politic, which "the system it- "self was de- "signated to re- "medy."

27.—The litigiousness and perseverance of the natives are noticed in the Regulations of 1772, and it is not that our laws have given birth to, and fostered this evil—the spirit of variance always prevailed, the only difference is, that, under the native Government, the inhabitants were accustomed to decide their contentions by the sword, whilst, at present, they are compelled to seek redress for their grievances real or supposed, in our Courts, and turbulence and dissension find vent by a less objectionable channel than formerly.

28.—The stress of business experienced in the Civil Courts, has been partly occasioned by the heavy criminal duties incident to an inefficient Police, but the improvement which is gradually effecting in the latter department, will afford a greater degree of leisure for the administration of civil justice.—A multiplicity of confused and uncertain rights and tenures originating under an unsettled form of Government, are also bringing to the test of enquiry—Where there is much to gain and little to lose, the discontented and those ignorant of the

principles

principles of our laws, have been attracted, and it will be some time probably, before the accumulation of suits, originating in these causes can be disposed of, and the equity of our system be fully understood.

29.—I understand that during the past year, the number of civil suits depending in the districts in the Western Provinces, has been very materially reduced, and although the provisions of the civil Regulations, enacted in 1814, may not effectually remove the difficulties under which the system of civil justice labors, as noticed by the Honorable Court, still, as far as I can learn, they have been greatly lessened, under the operation of those rules, and daily experience, it is to be hoped, will enable Government to supply what is deficient, without resorting to an entire subversion of the principles, on which it has hitherto proceeded.

See Orders of Government dated the 20th of August 1816, Para. 143.

30.—The Honorable Court are chiefly solicitous by a suitable distribution of labor, to provide for the prompt administration of civil justice, and they propose that this should be effected by relieving the Civil Judge from the functions of the Police, and by extending "the "instrumentality of the natives in conducting this branch of internal "Regulation."

31.—I should conceive that the above object may be attained without any material deviation from the course of procedure, by which the Courts are at present governed.

32.—The examination and trial of specific charges is that part of the criminal department, which at present occupies so great a portion of the Magistrate's time. In all that relates to the prevention of crimes, the apprehension of offenders and the control of the Police establishments, the business of the Police is comparatively light, and consists chiefly in perusing and passing orders on the Darogha's reports, and miscellaneous petitions.

33.—If therefore the Registers at the Sudder Stations were generally empowered ex-officio to transact the duties of an Assistant Magistrate, and the current business of criminal justice was transferred to the Registers in the way of reference from the Magistrate, the attention of the Judge might be confined, excepting in cases of commitment to the Court of Circuit (which under the proposed extension of the powers of the Magistrate would be rare) or in special cases of great importance to the proper business of the Police, and the relief thus afforded to the Judges Court would be superior to what the Honorable Court suggest, when they propose, after transferring the management of the Police to the Collectors, to vest "the Zillah Judge with a criminal jurisdiction in cases of greater magnitude but not of a capital nature, which might be brought before him on the commitments of the Collector, in his magisterial character."

34.—The arrangement above suggested has already been more or less adopted in practice in several districts, where the Judges have been aided by the appointment of Joint or Assistant Magistrates at the Sudder Station, and I have myself had experience of its advantages.

35.—It is essential to the well-being of the Police, that all reports from the Daroghas, and all petitions of every description, should be heard by the person by whom this department is managed, in order that he may know whatever is going on within the limits of his jurisdiction. It is equally essential to ensure weight to the control that should be exercised by the person considered to be the leading officer of the district. It is not requisite however, that the same officer should conduct the ordinary details of criminal trials; and however desirable it may be, that the Magistrate should occasionally visit the interior of his district, the obstacles and inconveniences which exist to any individual exercising judicial functions moving frequently from the seat of justice, are equally applicable to the Judge, the Magistrate and the Register.

36.

36 —The Register is at present Assistant to the Magistrate, but if it is found necessary to afford him relief in the Civil Court, in consequence of the additional duties induced by the foregoing arrangement, a Court might be established for that purpose at each Sudder Station, consisting of two of that very efficient and useful class of officers, the Sudder Ameens.

37.—On the 11th of July last, I had the honor to submit the draft of certain rules framed with a view to the re-establishment of the Chowdrees or heads of professions, which are thus noticed in the Ayen Akbery, under the definition therein given of the duties of a Cutwal: "Out of each class of artificers he shall select one to be at their head "and appoint another their broker for buying and selling, and re-"gulate the business of the class by their reports."

Para 88 "We "are strongly "disposed to "believe that "much benefit "to the commu-"nity would at-"tend the revi-"val under pro-"per modifica-"tions, of the "Powers for-"merly exer-"cised by the "Sirdar chow-"drees, Mar-"yees or heads "of professi-"ons."

POLICE.

38 —I find an article in the Judicial Code, proposed by the Committee of Circuit at Cossimbazar, and ordained by Government on the 21st of August 1772, in the following words.:

35th —"That whereas the peace of the Country hath for some "years past, been greatly disturbed by bands of Dacoits, who not "only infest the high roads, but often plunder whole villages, burning "the houses and murdering the inhabitants; and whereas those a-"bandoned out-laws have hitherto found means to elude every at-"tempt which the vigilance of Government hath put in force for "detecting and bringing such atrocious criminals to justice, by the "secrecy of their haunts and the wild state of the districts, which are "most subject to their incursions, it becomes the indispensible duty "of Government to try the most rigorous means, since experience "has proved every lenient and ordinary remedy to be ineffectual.

"That

" That it be therefore resolved, that every such criminal on convic-
" tion, shall be carried to the village to which he belongs, and be
" there executed for a terror and example to others; and for the fur-
" ther prevention of such abominable practices, that the village of
" which he is an inhabitant, shall be fined according to the enormity of
" the crime, and each inhabitant according to his substance, and that
" the family of the criminal shall become the slaves of the State, and
" be disposed of for the general benefit and convenience of the peo-
" ple, according to the discretion of the Government."

39.—These severe penalties and the subsequent provisions enacted in 1773, appear to have had little effect in subduing the evil; as we learn thirty-six years afterwards, by the preamble to Regulation IX, of 1808, that down to that period, " Regulations had from time to time
" been enacted for the apprehension and punishment of persons concern-
" ed in the commission of Dacoitee or gang robbery—a crime which has
" prevailed for a very long period in several of the districts within
" the province of Bengal, the continued prevalence however of that
" atrocious offence, &c."

40.—The atrocities noticed in the ordinance of 1772, were prevailing to an equal extent in many of the districts comprised in the Moorshedabad, Calcutta and Dacca divisions, so late as 1808, and Sirdar Dacoits were at that time notoriously plundering the country, who boastingly traced their forefathers as leaders of banditti, up to a period antecedent to the Company's accession to the Dewanny. The records of Government shew that in 1808, bands of robbers moved about the country in open day, demanding contributions even in some instances from the European Indigo planters settled in the interior, whilst robbery, torture, murder, rape and the most horrible enormities prevailed with impunity. I shall not be charged with exaggeration when I say, that to possess property and to reside beyond the limits of a city or town, at the period adverted to, was to exist in nightly appre-

See Genealogical Table annexed to Mr Elliot's report to Government dated the 14th, January 1811.

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hension of being roasted alive, and even the vicinity of the presidency or of the Magistrates residence, did not afford a reasonable hope of security.

41.—From these crying evils, the country has now been reclaimed. There are no sirdars of notoriety or persons following robbery as a profession descending from Father to Son, at large Affrays are of comparatively rare occurrence, and seldom attended with homicide or wounding; and outrage and violence, (I speak of the lower provinces, particularly) have been succeeded by peace and security.

42.—These beneficial results have partly been produced by what the Honorable Court term "a strenuous effort simultaneously made on "the part of the local Magistracy," but this effort was not fortuitous, it was excited by Government and backed by various regulations, strengthening the hands of the Magistrates, and affording these Officers the requisite means for turning their exertions to the best account."

43.—To the Members of Government who gave their voice and support to the measures adopted at the period adverted to, we in a great degree owe the present improved order of things, but to the unwearied attention paid to the subject by the judicial Secretary of the day; to the pains taken by him in his capacity of Superintendent General of the Police, to inform himself of the opinions of those best qualified to give advice; to the judicious measures and perspicuous ordinances all having a view to the same object which were digested and framed under his eye, and to the means which he was allowed to use for stimulating the service by every reasonable consideration of hope and responsibility, are we to ascribe the success of those efforts which he alone called into action.—I have no hesitation in stating this opinion, because I am satisfied that I shall be supported in it by every judicial officer, who has of late years had any concern in the administration of the Police.

Para. 92 "In "tracing as we "here propose "briefly to do, "the leading "causes from "whence the "defective state "of the police "has proceed-"ed."—See also Para. 112.

44.—The foregoing observations have been dictated by a perusal of those parts of the Honorable Court's address, which appear to imply the belief, that the Police of the country has been deteriorated under our management, and that improvement can only be effected by reverting to the system of Police, in force under the native government.

45.—The Honorable Court draws inference in favor of the native institutions of Police, as managed exclusively by the Landholders, from the state of the Police in the Jungle Mehals, and in the province of Hurrianah The fact is, that although the management of the Police has nominally been vested in the Landholders, under certain restrictions, in the Jungle Mehals, the Magistrate of that district has from time to time, found it necessary to exercise a very minute interference, and, especially in Pergunnahs Chatna and Pachete, to cause the Landholders to pay a fixed pecuniary allowance for the support of the Ghautwals, through the hands of the Police Daroghas, and from a paper recently transmitted by me to Government, it would appear that, "In the time of Mr. Blunt, Police Daroghas "were entertained by the Rajah of Pachete at the different Than-"nahs of Chass, Rughoonathpoor, and Gouraudhee, but experience pro-"ved the necessity of these Officers being placed more immediately "under the control of the Magistrate. With the consent of the Rajah "of Pachete, the present establishments were introduced by Mr. "Impey, in 1811. While these Daroghas act under the immediate or-"ders of the Magistrate, they at the same time perform the duties "of their situations in concert with the Rajah, who is still responsi-"ble for the efficiency of the Police of his whole Estate. The Darog-"has are also appointed and removed by the Magistrate under the ex-"isting Regulations, but they receive their salary through the Ra-"jah of Pachete, and also a Sunnud from him, on their being appointed."

See letter from the Acting Magistrate Jungle Mehals in Appendix to Police Report Lower Provinces, 1815.

46.—With respect to Hurriana, that province is subject to the Residency of Dehli, wherein the Police is managed under "a system "of

"of responsibility, which consists in making the Zemindars of vil-
"lages responsible for the robberies committed within the lands
"of their villages, unless they can shift the responsibility from
"themselves to others, by delivering up to justice the guilty indi-
"viduals, or by tracing the robbers to other villages" This arrange-
ment, as explained by the Resident, appears well suited to the state of affairs in the country adjacent to Dehli, and might perhaps be adopted with advantage in the higher districts of the Doab and Rohilcund, where the habits of the people are very similar; but be this at it may, the system is so entirely different from that established throughout the provinces subject to the control of our regular courts, and is in itself so powerful and arbitrary a course of procedure, that no conclusion with regard to the efficiency of the native institutions of Police, managed by the Landholders under such a rule, can, I think, be applicable to the districts to which the operation of the regulations of Government has been extended.

See the Resident's Report to the Governor General dated 12th December, 1815.

47.—In forming a judgment on this question, let the present state of the Police in the provinces managed by British Magistrates with establishments paid by Government, be contrasted with the Police in the Estate of Diaram of Hutras; in the Rampoor Jageer; in the country subject to the Nawab Vizier; and in other independent states or places, where the establishments are maintained by the Zemindars.

48.—During the tour made by the Right Honorable the Governor General in 1814, scarcely a night passed whilst marching through the country subject to the Nawab of Oude, without some robbery or other violent offence being perpetrated in the Camp, but the moment the borders were passed, these outrages ceased, or were of rare occurrence.

49.—The disorders which prevailed prior to 1808, owed their origin chiefly to the connivance or neglect of the Landholders and their Agents, and to the defective state of the village police establishment.

Para. 140. "We "have naturally been led to "consider the "question how "far it would

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"be advisable to adopt the policy of again employing the Zemindars in the management of the Police."

50 —The more heinous offences such as Gang and Highway Robbery, &c. have been put down by the powerful aid of the Landholders, but their assistance being forced and sudden, altho' it has as yet answered the purposes intended, cannot be reckoned upon as lasting. They have been stimulated in a great measure by the dread of they know not what, but when the difficulty of legally establishing against them neglect or misconduct, and enforcing the penalties to which they are declared liable is better understood, they will readily find means to thwart the Magistrate.

51 —The ability which the Landholder possesses of affording assistance, is derived from the heads of villages or other local agents subordinate to his authority, and they again are for the most part indebted to the village Chokeedars, or where those establishments are defective, to the Revenue peons, for information, and for the immediate agency by which their orders are carried into execution.

52 —The Thannadaree system was framed under a conviction founded on experience, that the Landholders were not sufficiently trustworthy to have the police confided to their charge.

53 —After a series of years, this system was found inadequate to the attainment of the ends proposed, without some degree of support being afforded by the landed interest; this has been obtained by compulsion, and the object in view has been partially ensured, but it would be unsafe from thence to draw the conclusion, either that the present controul exercised over the Landholders by the Magistrates, is sufficient for the maintenance of an efficient police, without our interfering for the better regulation of the subordinate police establishments, or that because owing to the imperfect formation of the system, we have been obliged to call in the aid of the Landholders, it is essentially necessary, that with the responsibility, they should be re-invested with any degree of police authority.

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54.---The Thannadaree institution as it is now constituted, is so far faulty, that it attempts to reconcile two systems entirely discordant, and while it professes to manage the police by means of the officers of Government, is in fact unable to act without the aid of the servants of the Landholders.

55.---But the arguments which originally induced the Government to deprive the Landholders of authority in matters of police, exist in full force at the present day, and we should rather, I think, look to what is necessary to give support to that which has already been done, and which has avowedly been productive of advantage, than revert in any respect to a system, which has been proved to be defective.

56 ---The Zemindars of former times never possessed any proprietary right in the soil. We gave birth to that fiction— they held their estates as tenants at the will of Government They were to all intents and purposes servants of the Sircar, as much so as our police darogghas, and consequently the Native Government could manage the police through their hands—when we made them independent and recognized rights which they did not before possess, we relinquished that hold upon their services which enabled the Native Government to regulate the domestic peace of the country. To supply this loss we have now been compelled to coerce by criminal penalties, but we have for ever lost that powerful influence which the former order of things gave, and it is therefore preferable that the police establishments which we have introduced, should as far as practicable be rendered independant of the Landholders, than that we should strive to interweave the two systems, or to maintain the peace of the country by the exclusive agency of the Zemindars, which must at all times be uncertain in its operation and difficult to manage.

57.---The ground work of the arrangement which we have introduced for the regulation of the Police, differs so materially from every

Para 129 "The establishment of those men

form

"sures of pre-
"vention which
"can alone be
"adequately
"and steadily
"secured by the
"general reste-
"ration of the
"old system of
"village Police,
"immediately
"superintended
"by the Man-
"dals or heads
"of local divi-
"sions."

Para 129. "It
"is this co-ope-
"ration of the
"people in sup-
"port of the
"Police, that is
"so much want-
"ed in the Ter-
"ritories sub-
"ject to your
"Presidency."

form of government, which had previously obtained in the country; that any attempt to warp the old local institutions into our Service, and to connect them with our establishments will, I conceive, create disappointment and ultimately prove abortive.

58.---The voluntary assistance which the community affords to the Police in England, is not to be looked for in this Country. Fortunately for us, there is no unity of interests amongst the native Inhabitants of the greater portion of our possessions. Societies are bounded by the limits of Villages. The landholder has little or no communication with his neighbour, and so long as he can pay his rents when they become due, and feed his dependants, he takes but little interest in the public weal. Where there is no public principle, fear and individual interest are the only motives which can be worked upon by Government The consideration of fear has been excited with benefit for the suppression of flagrant crimes, and some of the principal Landholders have been induced by the favor and distinction shown towards them by the Magistrates, to render essential services; but the operation of these motives is too uncertain and frail a basis to build upon, or even to support the structure already raised.

59.---The general establishment of an efficient Village Watch has long been admitted to be an object of primary importance to the welfare of the Country, and the measure has for some time engaged the serious attention of Government.

60 ---The chief difficulty in the formation of a plan for this purpose is, that of defining any single line of conduct applicable to the management of establishments, which on their present footing vary so essentially in every part of the Country.,

61.---In some districts the Chokeedars are exclusively supported by the cultivation of land, in others they are maintained partly by land

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and partly by contributions in money and grain. In some the Revenue peons are distinct from the Chokeedars, in others the latter aid both the Zemindars in their private concerns, and the Daroghas in the Police. In some they are men from the middling classes, and the allowances which they receive are considered sufficient for their support; in others they are appointed from the lowest classes, and the provision allotted them is deemed inadequate. In some they are of service in restraining offences, in others they are not expected to do more than furnish information. In some there are several kinds of Chokeedars, and their attention is divided between the Landholder, the Police, and the domestic concerns of the Inhabitants.

62.---In the district of Nuddea, the Chokeedars were so notoriously identified with the Dacoits, that the first step towards the suppression of Gang robbery, was made by the general reduction of the village Pyke establishments.

63.---In Burdwan, those establishments appear to have been continued down in a more complete form than is generally observed in other districts, and to their improved organization is ascribed, jointly with the assistance rendered by the Landholders, the suppression of Dacoitee in that district; but it was remarked by the Magistrate of that district in 1810: "In this state of things it is obvious that the Magis-
"trate must superintend the village Chokeedars with the greatest vi-
"gilance, and instead of expecting useful assistance from them in the
"discharge of their prescribed duties, must consider them as the
"most dangerous members of the community, as actual Robbers,
"whose official situations give them peculiar facilities to do mis-
"chief, and who instead of being the Guardians of the peace, are di-
"rectly or indirectly, concerned in the perpetration of almost every
"crime of enormity."

64.---The urgency of the occasion and the success of the measure justify the arrangement adopted in Nuddea, but it has since been

found

found necessary to re-establish Chokeedars in many parts of that district, and there can be no question regarding the absolute necessity for maintaining these establishments---A necessity, forcibly pointed out by the Magistrate of Burdwan in the following words, which I beg permission to quote as applicable to many other districts in both divisions of the provinces.

65.---" The establishment of the Thannah itself, comprises altogether only fifteen persons, and it is therefore evident, how much the Daroghas must depend on the village watchmen, not only for the receipt of intelligence from remote parts of their jurisdiction, but for the discovery and apprehension of offenders. Early and accurate information cannot be expected from the petty renters of land in this district, who generally speaking are mere adventurers, and are frequently ousted under their engagements, after a few months occupancy. They possess no influence either from hereditary claims, personal character, local attachments or long residence, and are neither willing nor able to give any useful aid, to the Magistrate, or Police Officers."

66.---The remnants of the old native institutions vary in usage almost in every Purgunnah, but what we require is an establishment, which like that of the Police Thannahs, can be introduced with equal effect in every part of the provinces. We want an institution of village watchmen adequately supported and exclusively devoted to the business of the Police. An arrangement that shall give at least one peace Officer in each Village throughout the Country. I think that this object may be secured, but not by any attempt to organize the Village Police establishments, on the principle on which they have heretofore been maintained.

See letter from the Secretary to the Board of

67.—No provision has yet been made in the Western Provinces in adjusting the terms of the settlement for the maintenance of the village

Chokeedars.

Chokeedars, and the Landholders have been left to defray this, in common with every other Village charge, from the general allowance, under the head of village expences.

68.—In the Lower Provinces, the allowances made to the watchmen have never been regulated or defined by Government, and in a few places, the Chakeran lands have been partially resumed by the collectors.

69.—Unless some means of subsistence are speedily secured to the Village Watchmen, these establishments will be irretrievably lost. As long as the Zemindars could employ them as their private servants for the collection of their rents, and for domestic services, there was a prospect of their being kept up, but now that the Magistrates insist upon their attention being exclusively directed to the public service, the Zemindars will take every opportunity of depriving them of such precarious means of subsistence, as may yet be left to them.

70.—After turning the question over in my mind, in every possible shape, I conceive that any attempt to realize a cess on this account in the villages throughout the country, on the principle of that collected in the Cities, conformably with the provisions of Regulation XIII, 1813, would occasion general discontent, and under any rules which could be devised, would be productive of very crying abuses. The proper control too, and regulation of the assessment and collection of the cess in the different villages, if we may judge from the business of this description recently created in the Cities, would require the exclusive attention of at least one European Officer in each district.

71.---Though fully satisfied of the propriety of the principle, on which the provisions of Regulation XIII, 1813 are founded, I cannot but remark, that the short experience had of the operation of those rules in establishing a subsidiary Police in the cities, has already

shewn

shewn that, even under the immediate eye of the Magistrate, nothing is to be hoped for from the aid of Native Society, in conducting the details of the simplest municipal regulation, although the same may be connected with it's nearest interests; the whole weight therefore, of controlling the assessment and collection, under any rules which could be devised on this principle, would ultimately fall on the officers of Government.

72.---Very beneficial effects are allowed to have resulted from the village watch, termed Golbundee, as organized in the district of Rungpoor, but this system, which requires that each inhabitant should in turn gratuitously keep watch, is so far faulty, that distinct responsibility attaches no where, and although owing to the pressing nature of the evil, and the extraordinary exertions of the Magistrate, the inhabitants have been excited for a time to acquiesce in this plan, for the suppression of Gang robbery, it cannot I should conceive be reasonably expected, that they will cheerfully continue to afford their aid to the Police, in the prevention of minor offences, by a conformance to a regulation, attended with so much personal trouble and inconvenience.

73.---Without supplanting any of the existing establishments, or subjecting Government to any additional expense, I think that the parts of the machine which are now weak, and disjointed, may be strengthened and permanently connected, by making the village Police establishments (I mean the Chokeedars) stipendiary and exclusively subordinate to the Magistrate, and his Police Darogahs; all allowances in land &c. being commuted for payments in money.

Para. 133. "It only remains for us on this subject, to direct that measures be taken for the gradual establishment throughout the country, of an efficient Police properly maintained and provided for, which shall be placed under the orders and control of the Company's Magistrates, and subject to such rules and regulations as on a reference to the Zillah Judges and Collectors

74.---By this arrangement, each gradation of the Police establishments, from the Village Chokeedar to the Magistrate being paid by Government, and rendered entirely independent of the landed interest, the efficiency of the whole system would be promoted, and its control materially simplified.

75.

75.---The co-operation of the Landholders, the Munduls, Mocuddums and Gomashtahs, has been constrained by heavy penalties. It is not necessary that these penalties should be enhanced, but unless an adequate provision is made for the village watch, and that branch of the Police establishments is placed under the exclusive control of the Magistrates, the services of the Landholders must continue to be rigidly coerced. On the other hand, if the Chokeedars are paid by Government, and their exclusive management confided to the Magistrate and his officers, the information of the occurrence of crimes which the Landholders and the heads of villages are required to furnish under heavy penalties, may be dispensed with, and in the course of time, they may be relieved from a considerable portion of that responsibility which, however necessary, must, when enforced without great caution and moderation, prove harassing, and create dissatisfaction, and ill will towards the Government.

"may be found best calculated to answer the purpose of such an arrangement, and may at the same time have reference to the former practice of the country."

76.---The most effective arrangement in my opinion is, that proposed by Mr. Bird, of Benares, and Mr. Lowther, of Allahabad, namely, to levy from the Landholders, a reasonable per centage on the Land Revenue assessed on each estate; the total amount realized in each district, being paid by the Collectors to the Magistrates, for the purpose of being distributed to the Chokeedars, in the same way as the regular Police establishments are at present paid. This appears to have been contemplated by Mr. Fortescue, in his report to the Governor General, dated the 1st of September 1814, wherein it is observed, that were a certain maintenance secured to the Chokeedars from the regular Police, their interests would go along with that establishment; and it may be further remarked that, exclusive of other considerations, a Police Militia constituted on this principle, would render the Government independant of the Landholders---enable it promptly to draw forth the resources of the country in the event of invasion by foreign power---able at all times readily to quell insurrection or commotion amongst its own subjects, and at no distant period, would ad-

mit

mit of a considerable reduction being made in the regular Police establishments, at present entertained at the expence of Government.

77.---In the Ceded and Conquered Provinces, where the assessment has not been fixed in perpetuity, an arrangement of this description might be effected with greater facility, perhaps, than in the Lower Provinces; but if the Landholders are declared at liberty to resume for their own immediate advantage, the whole of the Chakeran lands and other immunities heretofore enjoyed by the Chokeedars, no reasonable objection could be maintained against the equity of this adjustment, even in that division of the country.

78---By the fourth clause of Section VIII, Regulation I, 1793, the Governor General, in consequence of his having exonerated the proprietors of land, from the charge of keeping the peace, reserved to himself the option of resuming the whole or part of the produce of any lands, which the Zemindars at the time of the settlement had been permitted to appropriate for the maintenance of Police establishments, but with exception to a few instances of no great weight in the scale, these lands remain untouched by Government, and the Governor General has therefore an equivalent to offer to the Landholders, when imposing on them the cess here suggested.

79.---I conceive that the Landholders can at all times fix upon these lands at pleasure, but that they could not now under any arrangement be resumed by Government, to the extent necessary for the purposes desired, and it is under this conviction that I venture to suggest the practicability of a measure, which, abstractedly from the foregoing considerations, might appear harsh.

80.---If it could so be managed however, the burthen should be thrown on the rent free Landholders, who at present contribute nothing to the exigencies of the State; who live in constant appre-

hension

hension of having their lands assessed, and who would probably be well satisfied to have possession confirmed to them on so inconsiderable a quit rent as the equal distribution of the sum required would occasion.

81.---I beg permission to point out the objections stated by the Board of Commissioners, to endowing the Chokeedars with waste land, and to observe that daily experience evinces the instability of this species of provision, there being a constant inclination on the part of the Landholders to encroach on such lands, against which the Chokeedar has nothing to oppose, and the Magistrate has generally speaking no means of ascertaining his rights so as to support him in his tenure; moreover the Government has not covenanted servants sufficient to conduct the enquiries necessary to bring to light—"The "irregularities and surreptitious assumptions of territorial allotments "which properly belong to the village Police," and any minute enquiry into the modes of contribution and payment which are understood to vary even in every village, would be endless, whilst the information obtained would be too diffuse to prove useful or of practical account.

See Appendix C

Para 133 "It "only remains "for now this "subject to di- "rect that mea- "sures be tak- "en for the "gradual es- "tablishment "throughout "the country "of a sufficient "Police pro- "perly main- "tained and "provided for, "which shall- "be placed "under the "orders and "control of the "Company's "Magistrates, "and subject "to such rules "and regula- "tions as on a "reference to "the Zillah "Judges, and "Collectors "may be found "best calculat- "ed to answer "the purpose "of such an "arrangement, "and may at "the same "time have re- "ference to the "former prac- "tice of the "Country"

See Appendix B

82---The accompanying abstract prepared from the records of this office will explain the footing on which the establishments of village watchmen stand in the Western Provinces.

83.---It will be remarked that the Magistrates of Agra and Etawah, notice the total absence of village peons as Watchmen in their respective districts, and indeed from the general tenor of the information contained in this Abstract it would appear, that these establishments are rather at present of service in furnishing intelligence, than in restraining offences.

84.---Objections may be taken to the plan above suggested, under the apprehension that the Chokeedars, as the servants of Government,

Government, may feel less interest in the well-being of the inhabitants of their respective villages, than when they were the immediate servants of those inhabitants, and this objection would be of moment if they were really paid and supported at the present time by the inhabitants, as they are in Towns, but although the village Chokeedars at the period of the harvest, and on other occasions may in some parts of the Country receive exclusive of other allowances, certain trifling contributions in grain, they are generally speaking avowedly supported by and are considered to be the servants of the Landholders, and their local agents; in placing them therefore under the immediate management of the Thannah establishments the question to be considered is, whether they are likely to commit more or less abuses under the exclusive control of a Police Darogha, subject to the constant supervision of a Magistrate than under a Zemindar, by whom they are now daily employed in making exactions, seizing defaulters and extorting unlimited demands.

85.---If it is objected that the Daroghas could not be safely entrusted with the payment of the Chokeedars allowances, it may be observed that where the interests of so many individuals are concerned in the fair disbursement of the money, no abuse of moment could occur without it's being immediately brought to the Magistrate's knowledge by the Chokeedars, and it may be further remarked that many of the Ghautwalls in the Jungle Mehals are at present, and have for some time past, been paid through the Regular Police officers in that district.

86.---The Magistrates commonly give the preference in hearing to petitions against their own officers, and the ready means of redress on complaint would obviate all risk of general abuse from the Chokeedars assuming irregular authority, in consequence of their being paid by Government.

87.---The Landholders are naturally averse to the establishment of Thannahs on their estates, but the peaceable part of the resident inhabitants

habitants are always well pleased with the measure, and the Magistrates are so satisfied of this that if the Police Establishments at present paid by Government were sufficiently numerous, they would not hesitate to distribute them throughout the Villages subject to their authority.

88—In submitting these suggestions, I do not consider that I am proposing any substantial innovation. We have taken the management of the Police into our own hands, and we are bound to see that the establishments of which we have assumed the control, are placed above want and temptation. In fact in rendering the Village watch stipendiary, we are only extending to the subordinate instruments the principle of a system, which has for some time been enforced with advantage for the maintenance of the superior branches of the establishment.

89—It may perhaps be urged that the Zemindars and resident inhabitants have other claims on the services of the Village Watchmen besides the maintenance of the peace, but if such are admitted the present establishments cannot be turned to sufficient account for the purposes required, and it will be necessary to new model their constitution not partially but wholly. In truth, however, these claims originate for the most part in the decay of former institutions, and it may be remarked, that the authority to distrain for arrears of rent now vested in the Landholders, conveys ample power for the collection of the land rent without the aid of the Village Chokeedars.

90—It may possibly be conceived that the payment of the Chokeedars in the manner proposed would be virtually raising them above their natural condition in society—the object however of this arrangement is not to interfere with the domestic relations of the people or to raise any class above it's proper level, but to provide an establishment which can be governed under the same rules in every part of the country.

91—It is not proposed to supplant the existing establishments, neither is it intended that all the individuals now employed as Pykes, Passees, Goraits, Dosands, Dhanooks, &c. should as a matter of course become watchmen and be paid by Government, the election of the Chokeedars in each Village might be made by the resident inhabitants by means of Punchayets, an arrangement which would obviate all apprehension of improper persons, or persons adverse to the real interests of the inhabitants being employed on these duties.

92—Supposing the amount necessary for the support of these establishments to be levied from the Landholders, it may be apprehended that they will seek to remunerate themselves from the tenantry, and this I think not improbable, but even in such case the burthen would fall on the resident inhabitants, for whose immediate benefit the institution is proposed, and the odium of the tax would be shifted from Government to the Landholder, and collected in a more palatable way than could be expected from contributions collected on the principle of the provisions enacted in Regulation XIII, 1813.

93—There is nothing novel in placing the Village Watchmen under the Police Darogha, they are already subject to his orders. By rendering them exclusively amenable to his control, and giving them a fixed allowance in money, their services which are at present diverted from the Police by attention to the private concerns of the Landholders, and to the cultivation of the lands allotted for their subsistence, would in future be directed to the professed object for which these Officers are maintained. So long as the Chokeedar continues the servant of the Zemindar, the latter has it in his power to suppress offences from the knowledge of the Magistrate, to screen offenders, to mislead the Courts by tutored evidence, and to exercise secret influence, against which the Magistrate contends in vain.

94—The security of those advantages which have been gained, the prospect of future improvement, and the stability of the system

which

which has been introduced, will rest mainly on the efficient organization of these establishments, and as the success of any arrangement which may be adopted for this purpose will ultimately depend on it's simplicity, a stipendiary watch has this decided advantage that it is more susceptible of easy management than any other plan which could be devised. In short I feel satisfied that no adequate provision can in any other way be secured for the Village Watchmen, and I have therefore considered it to be my duty to submit my sentiments on the subject in this place.

CRIMINAL JUSTICE.

95.—That part of the Honorable Court's letter which relates to the discouragement given under the Regulations, to the institution of charges of misdemeanors and petty offences, whether the same be true or false, may be properly considered under the above head. Para. 158 to 162 inclusive.

96.—Charges of this description were cognizable by the Police Daroghas, prior to the enaction of Regulation VII, 1811, when in consideration of the abuses practised by those Officers, and with the view of directing their attention more especially to the suppression of heinous offences, they were restricted from receiving any charges of adultery, fornication, rape, calumny, abusive language, slight trespass or inconsiderable assault, and with the view of further restraining the institution of unfounded prosecutions for adultery, fornication, calumny, abusive language, trespass and assaults, the Magistrates were by Regulation III, of 1812, strictly prohibited from issuing process, without in the first instance satisfying themselves that adequate grounds existed for proceeding against the party accused, and without the party preferring the charge, depositing in the hands of the Nazir, a sufficient sum for the subsistence of the witnesses who might be summoned on his application.

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97.---There can be no question that the abuses heretofore practised by the Police Officers, have been greatly circumscribed by the restrictions above noticed, and that the Police has materially benefited by the attention of the Daroghas, being confined to the suppression of flagrant offences. Unfounded charges are likewise of much less frequent occurrence than formerly, and the public has benefited by the inconsiderate summons of parties being restrained, and by the caution now used in causing the attendance of witnesses.

98.—It has been intimated to me by several Officers of Police, though, I believe from interested motives, that the difficulty at present experienced in obtaining redress for petty grievances, has encouraged the strong to tyrannize over the weak, and has given birth to a spirit of revenge in the latter, which has in some instances led to assassination. I do not myself see reason at present to attach weight to this opinion, and therefore think it preferable that a certain portion of evil should be submitted to, than that we should undertake what we cannot perform, and exercise an interference which may be productive of harm, and which is not understood to be pressingly required.

99.—It would be impracticable to take cognizance of all the petty broils and insignificant disputes, which arise in so extensive a population, and in attempting it, we should only, I fear, clog that part of the machine at present in action.

100.—Under the existing rules, if an assault is attended with bloodshed, the offence is taken cognizance of by the Daroghas of Police, but if not, the party injured, either endures the grievance, or threatens his opponent with complaining to the Huzzoor, and thus obtains redress by compromise, or if the injury sustained is past endurance, proceeds to the Magistrate to prefer his complaint, but as this cannot be prosecuted to enquiry but by an outlay of from at least six to ten rupees in each case for diet money to witnesses, a very few of these

cases

cases are now brought to trial. Cases of fornication and adultery occasionally come under the investigation of our Courts; but are more frequently adjusted by the inhabitants themselves, by Punchayets, &c. and the ignominy, with which these offences are viewed by all ranks, is, as far as I can learn, a very powerful check.

101.—I do not conceive that any hired agency which we could establish, would be equal to the investigation of all the petty differences coming under the denomination of private wrongs, and at the same time, be so regulated as to admit of our controlling it's operation, and preventing it's becoming a source of evil greater than that which it's Institution may be intended to remove.

Para. 160. "To our Native subjects we must look for the supply of the deficiency so severely felt. We have long employed them in the administration of Civil Justice in its minor concerns; and the reasons are equally cogent why we should in the same manner avail ourselves of their instrumentality in the affairs of criminal Judicature."

102.—I think it would be injudicious to entrust the Mofussil Commissioners with any authority in affairs of Criminal Jurisdiction. They are for the most part men of the same class in life with the Daroghas, and it would be difficult to deter them, when exercising the same powers of cognizance, and the additional powers of decision, from practising the same abuses which the Daroghas formerly committed. It may deserve consideration what pains and penalties the Commissioners could safely be allowed to inflict in the trial of criminal cases—If corporal, to what extent; and if by confinement, is it proposed that there should be Mofussil Jails, or are the Prisoners to be sent in to the Magistrate, and, if they are permitted to impose fines, is any and what appeal contemplated, and what Courts have we equal to the discharge of the additional duties incident to such appeals.

103.—But although I think, that the Mofussil Commissioners could not be safely entrusted with any part of the administration of criminal justice, I am of opinion that Native commissioners of a superior order might with advantage be employed to aid the Magistrate in the trial of petty cases at the sudder station, by which means the trial of cases of this description being facilitated, the detention of the witnesses

would

would be of less duration and the expences of prosecution by consequence be diminished.

104.—The Law Officers of the Judge's Court are ex-officio commissioners for the trial of suits cognizable by the Sudder Aumeens, and in employing them in the execution of the duty above proposed, it would perhaps be a seasonable check to form a subordinate Court at each sudder station, consisting of the Molovee and Pundit to sit jointly (instead of separately as at present) for the trial of such petty cases as the Magistrate may deem proper to refer for their investigation.

Para. 170 "The principle of enlarging the powers of the Zillah Magistrates has very often been enforced by the Judges on your establishment." See Para 190, Police Report Western Provinces, 1815.

105.—That the superior Courts are occupied too much with minor details which might for the most part be safely confided to the Magistrates, is shewn by the circumstance that nearly one third of the number of persons convicted before the several Courts of Circuit during the year 1814, were sentenced to periods of imprisonment short of two years.

See Para. 164.

106.—The Police and the general administration of criminal justice, would I think be essentially promoted by the extension of the Magistrates powers, and while the evils noticed by the Honorable Court, would be materially diminished, the Civil Courts would benefit by the relief which the arrangement would afford both to the Magistrate and to the Judge of Circuit.

Para. 175 to 177.

"We are led to entertain very considerable doubts whether this discretionary authority has not been exercised without that care and circumspection, which are

107.—The observations of the Honorable Court contained in these paragraphs appear to refer solely to the number of prisoners confined for want of security under the direction of the Magistrates, but as much has been written by different authorities in regard to the confinement of prisoners, who have not been convicted of specific offences, it may be convenient to attempt an explanation of the practice which has hitherto prevailed in this respect.

108.—When the Magistrates were excited a few years since to an extraordinary effort for the improvement of the Police, the Sirdar Dacoits and many Robbers, and Public offenders, of great notoriety, against whom no evidence to specific acts of criminality could be obtained, were apprehended, and sentenced to be confined till they furnished sufficient security for their future good behaviour.

"so necessary to prevent its becoming an engine of oppression and injustice."

109.—There are three classes of persons referred to when speaking of prisoners of this description namely; those sentenced to confinement by the Court of Nizamut Adawlut, the Courts of Circuit and the Magistrates.

1st.—Those confined under the orders of the Court of Nizamut Adawlut, are for the most part persons who have in the first instance been committed to the Court of Circuit by the Magistrates for Gang Robbery, Murder, or other crimes of magnitude, and who being convicted by that Court, their cases have under the Regulations been referred for the final orders of the Court of Nizamut Adawlut, when some legal disability, or defect being discovered in the evidence, an acquittal has followed, and the superior Court has at the same time, under an impression of the prisoners guilt or on evidence to their bad character, directed their imprisonment in conformity with a provision contained in clause the sixth, Section XI, Regulation LIII, 1803, which declares "That in cases of strong suspicion, though not amounting to conviction, as well as upon proof of notorious bad character, the Judge may direct the Zillah or City Magistrate to detain the person in custody until he shall give sufficient security for his future good behaviour and appearance, when required."

2nd.—The prisoners sentenced by the Court of Circuit to confinement till they furnish security, are persons who have been sentenced under the rule above mentioned, on the failure of the prosecution.

3rd.—Those confined by orders of the Magistrate are individuals of notorious bad livelihood, against whom however, no evidence of any specific crime can be adduced.

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110.—In cases where the offenders are notorious as Dacoits, they have been ordered to be confined till they furnish such specific security as might appear requisite, without any limitation of the period of their imprisonment being named. If they are notorious as robbers of an inferior description, a period has been fixed, at the expiration of which they are directed to be discharged, whether they can furnish the required security or otherwise.

111.—The evidence to character on which these sentences are passed, has usually been collected by the Police Officers in the first instance, in the form of a Sooruthal—the persons named as witnesses being subsequently examined in the presence of the Magistrate, and such evidence as the prisoner may be desirous of adducing to rebut the charge of ill fame being heard, before the issue of a final order.

112.—At each session the orders of this description passed by a Magistrate are revised by the Judge of Circuit, and the circumstances of each case and the amount of security demanded, are taken into consideration.

113.—If the foregoing explanation is correct, it would appear that those prisoners who are confined for want of security under the sentence of the Court of Nizamut Adawlut, have been deemed to be offenders in the eye of the Police Darogha, the Magistrate, the Court of Circuit and the Court of Nizamut Adawlut, and consequently, that their cases having undergone the consideration of every authority concerned in the administration of the Police and Criminal Justice, no further enquiry could be instituted unless by the establishment of some special tribunal for the express purpose of revising the proceedings already held, and this I presume will not under the circumstances stated be considered necessary or advisable.

114.—The class confined for want of security solely by the orders of the Magistrate, being likewise regularly brought under the periodi-

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cal review of the Judges of Circuit, no apprehension need be entertained of any undue or inconsiderate exercise of the power vested with the Magistrates, in this respect.

115.—The efficiency of the control exercised by the Judges of Circuit, in regard to the revision of these last mentioned orders, is evinced by the persons confined for want of security in the Lower Provinces by orders of the Magistrates, having been reduced in the number of seven hundred and eleven, during the past year, namely, from two thousand eight hundred and thirty-two, the number confined at the close of 1814, to two thousand one hundred and twenty-one, the number confined at the close of 1815.

116.—Of the three classes above described, the 2nd is that, in which the chances against the prisoner appear strongest, in as much as there is no provision made for the revision of the Judge of Circuit's order.

117.—At the close of 1815, the entire number of prisoners confined in the jails of the Lower and Western Provinces, on whom sentences of imprisonment had been passed, on conviction of specific crimes, amounted to eleven thousand eight hundred and sixty-one, and at the same period the persons confined in different jails for want of security amounted to five thousand three hundred and eighty-nine—two thousand seven hundred and twenty-seven of whom were imprisoned under orders of the Nizamut Adawlut and Court of Circuit.

118.—Comparing this statement with the account above given, of the precautions under which persons are required to furnish security, a reasonable conclusion may I conceive be drawn, that this power is an integral part of our Judicial administration, necessary to supply certain defects in our system, or extraordinary difficulties to which

our

our Courts are subjected in prosecuting offenders to conviction, partly caused by the unwillingness of respectable men to give evidence, under any circumstances, and partly from the little comparative credit due to oral testimony, in this country.

119.—The detention of notorious Dacoits in confinement till they give security, has unquestionably had great weight in restraining the occurrence of gang robbery. It is desirable and proper, that the fullest evidence procurable should be taken in such cases to prevent abuse, but the inveterate habits of a Dacoit, render it necessary for the peace of society, and the effectual suppression of this crying offence, that every robber, who has actually been notorious as a Dacoit, should be kept in confinement indefinitely, unless he afford the Magistrate satisfactory security for his future good livelihood. If therefore it should be deemed essentially requisite to institute any special enquiry into the merits of the sentences which have already been passed on persons confined for want of security by the orders of the different Courts, in consequence of the discussions recently agitated on this subject, I should hope, for the sake of the Police, that no deviation from the rule above stated will in regard to Dacoits be admitted, and also with reference to the peculiar nature of the evil, and the difficulties heretofore experienced in putting it down, that great caution will be used in such revision and that no application will be made of abstract principles of English law, in determining the cases adverted to.

120.—I beg permission to quote in this place, an Extract from the Proceedings of the Governor in Council, under date 19th April, 1774, as containing remarks in many respects applicable and deserving of attention in the consideration of this question.

"4th —" I am sorry to enumerate amongst the causes of the in-
" crease of Robbers, the regularity and precision which have been in-
" troduced into our Courts of Justice. The dread which the common
" people entertain of the dacoits, and the difficulty which, even with-
out

" out such an impression must attend the conviction of an offender of " this kind, however notorious, before a Mahomedan Court, which re- " quires two positive evidences in every capital case, afford them an " assurance of impunity in the prosecution of their crimes, since they " generally carry on their designs in the night, or under disguise—A- " mong those who have been convicted of robbery, I do not recollect " an instance in the proceedings upon their trial, in which their guilt " has been proved by evidence, but by their own confession only; " this has occurred in so many instances, that I am not without a sus- " picion that it is often obtained by improper means."

5th.—" The chiefs of these banditee are generally as well known " to be such, as if they were invested with a legal and public authori- " ty for the command which they exercise; yet it would be scarce " possible to prove any direct fact against them, on which they could " be condemned; and I have heard the names of some who have been " taken up and examined on the notoriety of their character, but have " been acquitted and released for want of evidence against them—With " such offenders, the authorized practice of the former Government has " ever been to ascertain the identity of the men, and to condemn with- " out waiting for further process to establish any specific charge a- " gainst them. I know to what I expose myself by recommending a " practice so repugnant to the equity and tenderness of our own con- " stitution, but from a principle superior to every consideration which " may effect myself, I venture to declare that unless this Government " adopts the same summary mode of proceeding in such cases as I " have described, I see no probability of freeing this Country from the " worst of oppression, or restoring it to security and order—A " rigid observance of the letter of the law is a blessing in a well regu- " lated State, but in a Government loose as that of Bengal is, and " must be for some years to come, an extraordinary and exemplary " coercion must be employed to eradicate those evils, which the law " cannot reach."

Para 182 "We are satisfied that a good system of Village Police superintended by an active and zealous Magistrate would render it very rarely if ever necessary to have recourse to an Agency of (that of Goindahs,) so equivocal a character."

121.—Assistance is at present occasionally afforded to the Police by spies and informers in particular cases, but the use of professed Goindahs was only resorted to for the apprehension of notorious Dacoits, concerning whose haunts information could not by other means be obtained. The employment of this last mentioned agency having answered the end proposed, it has now been discontinued, at least, I am not aware of any persons earning their livelihood by the profession being entertained at present by the Magistrates in any part of the country.

Para. 183 "We also desire that an enquiry should be instituted into the existing Regulations and forms in both the Departments of Police and Criminal Justice, with a view to the revision of the same so as to combine as far as may be possible the expeditious and effectual dispatch of business with regularity and correctness of proceeding"

122.—By the orders conveyed to me in the 56th paragraph of your letter of the 30th August last, I am instructed to submit for the consideration of the Nizamut Adawlut and eventually for Government, any specific suggestions founded on a general revision of the forms referred to by the Honorable Court, and the work in question is now in progress.

Para 184 "That you at the same time direct your attention to the form of protestation which witnesses are required to observe in giving evidence in our Courts of Judicature."

123.—No substantial and general improvement can be looked for in regard to the subject adverted to in the quotation given in the margin, excepting under a system of education which may induce an improved state of morals, but as the benefits of such a system could not be matured for the advantage of the present generation, it may be advisable to endeavour to check the evil by rendering the administration of the corporal oath more impressive, and by attention to those forms of adjuration which the natives adopt amongst themselves.

124.—By Section VII, Regulation III, 1803, (extended to the criminal Courts, by Section XXV, Regulation VIII, 1803, and Section V, Regulation L, 1803) the Courts are required to administer such oath as may be considered most binding on the conscience of the person examined, but this rule being expressed in general terms, it has commonly been considered sufficient to adjure all Hindoos, indiscriminately by the water of the Ganges, and Mosulmans by the Koran.

125.—I conceive that it would be highly advantageous to institute an enquiry in each district, for the purpose of ascertaining the local forms of protestation considered by the inhabitants themselves to be most binding, in order that the several Judicial authorities may be instructed to enforce the administration of the oath according to such forms.

126.—I beg permission on this subject to refer you to the sentiments expressed by me on former occasions, as contained in the accompanying extracts. See Appendix R.

GENERAL REMARKS.

127.—The prominent feature of the arrangements proposed to be adopted by the Honorable Court, is the transfer of the Police and the administration of criminal justice from the hands of the Magistrate to that of the Collector of the Land Revenue.

128.—The expediency of vesting the collection of the Revenue and the administration of justice in separate Officers, is very ably discussed in Mr. Harington's Analysis, and I have nothing to offer in support of that principle in addition to the arguments therein advanced. See Page 35 to 44 inclusive, vol. 1st.

129.—The considerations which appear to have chiefly weighed with the Honorable Court in the suggestion of this plan are, that the Collector has more leisure than the Judicial Officer; that he has more influence over the Landholders, the Munduls, or heads of local divisions, who form the permanent and natural authorities of the country; that the sedentary occupation of a Judge prevents his moving about his district with the same facilities possessed by the Collector; and that, by relieving the Judge from the management of the Police, he will have more time for the conduct of his civil functions. See Paras 133, 84, 63, 65.

130.

130.—In respect to the first point above noticed, it will be generally admitted that the duties of a Collector of the Land Revenue in the Lower Provinces are far less laborious than those of a Magistrate, but this is not the case in the Ceded and Conquered Provinces, where owing to the unsettled nature of the engagements executed by the Landholders, the time and attention of the Revenue Officer are like that of the Magistrate, wholly devoted to the duties of his station.

131.—Under the provisions of Regulation XV, 1813, the office of Dewan to the Collectors of the Land Revenue was abolished, and it was directed that the " several branches of the public business in " the Offices of the Collectors should be conducted by distinct and " separate establishments, subject only to the direct and immediate " control of the Collectors themselves." This direct control and immediate superintendence combined with the personal management of the Sudder Distilleries enjoined by the Abkaree Regulation of 1813, the sale of Stamps under Regulation I, of 1814, the Assessment and Regulation of the different Ghauts and Ferries under Regulation XIX, of 1816, and the miscellaneous duties connected with their stations, ought and must I should conceive, afford ample employment for any individual, if the duties are properly transacted even in the Lower Provinces, and if to these is super-added the care of the Police, more will be imposed than can be performed, and both the Revenue and the Police will ultimately suffer.

132.—With reference to the argument, that the Collector has more influence over the Landholders, the Munduls and other natural authorities of the country, it may be observed, that whatever influence of this description was formerly possessed by the Collectors in the Lower Provinces, has entirely faded away, and amongst other proofs which might be advanced of this, it will be sufficient to remark, that at the present time; the Collectors in Bengal, Behar and Orissa, cannot even procure through the Landholders, the necessary

supplies

supplies for the Troops of Government when marching, but by the aid of the Magistrate's Police Officers.

133.—It may be remarked also, that in those districts where the demands of Government have been settled in perpetuity, the Collector has little or no personal communication with the inhabitants residing in the interior of his district, and the Zemindar who resorts to the Sudder Station, whether in the Western or Lower Provinces, knows full well, that the Collector must and will have the last rupee of Revenue due on his engagements, but that beyond the enforcement of the land tax, he is in no respect amenable to the Revenue authorities.

134.—The legislative enactments which have been promulgated since the year 1807, have in matters of Police, had for their object the transfer of the influence referred to, to the Magistrate, and the hands of the Judicial Officers exercising Magisterial functions, have now been strengthened in this particular to an extent, far exceeding the influence at any time possessed by the Collectors of the Land Revenue.

135.—In regard to the advantages which the Collector has over the Judge in consequence of the sedentary occupation of the latter not admitting of his moving about the country, it may be observed that as it is proposed with the charge and administration of the Police to transfer to the Collector the authority " to decide on crimes such as " are at present entrusted to the Zillah Judge in his capacity of Ma- " gistrate," the trial of criminal cases must necessarily confine the Collector to the Sudder Station, and what with the proposed adjustment of disputes between the Landlord and Tenant in regard to undue collections, the investigation of disputes respecting boundaries, the care of the Jail, the Treasury, the Stamps and the Sudder Distillery, it is to be presumed that the Collector would be equally shackled with the Judge.

Para. 135. "The "Collector must " under any "circumstances " be far bette " qualified to " superintend " the Police" " than a Civil " or Criminal " Judge can " ever be, who " is necessarily " confined to " one spot."

136.

136.—But supposing the management of the Police to be transferred to the Revenue Officers, in what manner is the business of the Criminal Courts to be conducted at Juanpoor, Mirzapoor, Ghazeepoor, Gya in Behar, Beerbhoom, Dacca Jullalpoor, Bauker-Gunge, Hooghly, the Jungle Mehals and other places where Magistrates are at present employed, but where no Collectors have hitherto been stationed.'

137.—Substantial objections might also I conceive, with reason be urged to placing one officer under two distinct Boards of Control. Suppose a Collector is engaged in making the settlement of a Mehal at a distance from the Sudder Station, and in consequence of such occupation the business of the Criminal Court at the sudder Station falls in arrear, the Court of Circuit or Court of Nizamut Adawlut will require an explanation, but when given, how are those Courts to judge of the sufficiency of a plea which can only be known to the controlling authority in the Revenue Department.

138. If the Judge is relieved from the charge of the Police and the investigation of criminal cases, undoubtedly he will have considerably more time to devote to the Civil Court, and if this object could be obtained without risk of material injury to the departments of Revenue and Police, I should be an advocate for the experiment, but the measure in the form it is now proposed teems in my opinion, with imminent danger to two branches of the service, which are generally admitted to be daily gaining ground, for the probable chances of reforming a third, the well being of which, however much it may effect the rights of individuals, is of comparatively less importance to the general welfare of the people and the State.

139.—The delays of chancery are proverbial in our own country, but who ever contemplated the entire subversion of the constitution and the commencement of a new order of things to meet the difficulty.

140.—The work of Legislature is slow but progressive—local considerations and daily experience beget new rules of conduct, those which are practically useful stand, others which are deficient are modified, amended or rescinded, and in a long course of time a system is raised, but the wisdom of man has never yet been found equal to the formation at once of a permanent code of laws, calculated to meet all the occasions of life; and in a country like this, ruled by foreigners, speaking a different language from their subjects, too much caution cannot be used. In fine, all revolutions of system or sudden innovations of a general tendency must be in a great measure speculative, and should therefore I think, when applied to this country, be deprecated as dangerous, and never attempted unless on the most substantial grounds

I have the honor to be,

Office of Supt. Police,
Camp Mangee, the
16th December, 1816.

Sir,
Your Most Obedient Servant,
J. SHAKESPEAR,
Superintendent of Police
Western Provinces.

APPENDIX.

A

1 —The term Punchayet is derived from the word Punj, the Tribunal being constituted of any number of persons not less than five.

There are four kinds of Punchayet.

1st.—For the adjustment of disputes between individuals.

2d.—For the adjustment of disputes between distinct castes or tribes.

3d.—For the investigation and punishment of offences against morality or caste.

4th.—For enquiry into matters affecting the general interests of the inhabitants and for the resistance of oppression.

1st.—In the adjustment of disputes between individuals, either the parties or others concerned in the decision of the question at issue, name a given number of persons to arbitrate as Punchayet, and appoint the time, date and place for the trial.

On the meeting of the assembly, the members first ascertain the ground of dispute, and then examine the witnesses named by the parties or any other person acquainted with the circumstances of the case, and having questioned them on each point, they make their award verbally, and neither the evidence nor any part of the proceedings holden before these tribunals is taken in writing.

The

The witnesses examined by the Punchayets are not usually sworn according to the custom of the Adawlut, but are questioned by their "Dhurum" or "Eeman" or by the heads of their sons.

Occasionally to make the oath more binding, the Mossulmans are sworn in their Musjids, and the Hindoos on the water of the Ganges, and sometimes the following form of adjuration denominated Dhurum Ghut, is resorted to in Bengal. A new earthen vessel filled with water is placed on a spot of ground, cleared and planted with grains of rice, on which a fresh branch of a mangoe tree and a lighted lamp being deposited, the oath is administered over the whole.

The Punchayet sometimes sits for several days when the enquiry cannot be completed at one meeting.

If either party refuses to conform to the award, the case is carried into the Adawlut, and it frequently happens that the award leads to an affray—one party attempting to possess himself of the property assigned him by the Punchayet and the other resisting.

2d.—When disputes arise between distinct tribes in consequence of the proximity of their respective places of worship or owing to other causes, a Punchayet constituted of the principal members of each tribe is elected for the adjustment of the difference, and if any expense is incurred in the meeting, a general collection is made to defray it from the individuals of each tribe concerned in the dispute.

3d —Hindoos offending against the tenets of their caste or against morality, are frequently tried by a Punchayet formed from the persons of chief influence in their tribes, and if the charge is established the individual is sentenced to a pecuniary fine or to furnish a feast to the members of his tribe, and until due expiation is made for the fault, he is excluded from his caste, and deprived of the aid of the Barber, Washerman, &c.

4th.—When any orders are issued by Government or acts are performed by persons of power and influence in opposition to the general interests

interests or wishes of the inhabitants, the persons considering themselves aggrieved, of whatsoever caste, assemble together and elect a Punchayet from the heads of their respective tribes and by oath agree to abide by the determination of such Punchaytee—Punchayets of this description commonly assemble under some Peepul or Banian tree, and the first step is generally to cause the shops to be closed, which process is termed "Hurtal."

The form of adjuration commonly adopted on occasions of this nature is, to cause the person sworn to stand or to place his hand in a circle or square marked out on the ground, as the type of the place held most sacred in the estimation of the person adjured. Persons departing from the engagements into which they may enter in Punchayets of this last mentioned description, are excluded from their caste till pardoned by the members of the Punchayet.

A true translate,

J. SHAKESPEAR,

Superintendent of Police.

B

MAGISTRATE OF JUANPOOR, MR. R O WYNNE.

Chokeedars are those employed exclusively in duties of Police. Goraits are employed by Zemindars for other purposes. Chokeedars are entertained by the Zemindars and paid some in land and some in money. A few entertained by Bankers.

Their means of support very unequal, and in general very inadequate.

Employed by the Landholders and Mahajuns in aid of the collections, and for various purposes.

The

The commission of crimes is certainly restrained by these establishments, and if they were regularly paid and placed under the Thannahdars, their services might be rendered most beneficial.

Some few instances of Goraits being concerned in robbery, have come under the Magistrate's observation.

ACTING MAGISTRATE OF CAWNPORE, MR. W. H. TIPPET.

The Chokeedars are termed Goraits or Dhanooks.

There are persons in the large villages in the direct routes of trade, who gain a subsistence by affording a nightly protection to merchandize and are paid by the owners—they are generally herdsmen.

The watchmen in towns are paid by a contribution from each householder in various proportions

The village watchman is supported by small grants of land which in the village accounts is noticed as free of assessment. The quantity varies from six to twenty biggahs. Six is the usual grant to a Gorait—Exclusive of this support there is a contribution termed Goraitee, each Ryot paying his quota of grain, and others of the village

An industrious Gorait may raise from Rupees 2-8 to 3 Rupees per mensem.

They still aid the Zemindar in the collection of his rents, as under the old system. It is considered the duty of the watchman to report all occurrences to the Police Officers, under whose authority his village may be situated.

These establishments are no great aid at present to the Police, and are possibly instigated by the inadequacy of their allowance to the commission of crime.

MAGISTRATE

MAGISTRATE OF AGRA, MR. R. TURNER

Transmits a letter addressed by him to Government on this subject on the 25th of February 1813, as follows: Inefficiency of the Police to be ascribed to the total want of village Police Officers.

The only public servant now entertained is a Bilahur, whose duty is confined to reporting to the Daroghas, and he is indifferently paid. This want of Chokeedars has occasioned the extortion from the Zemindars of those duties expected from the watchmen, but this plan very defective.

Waste lands might be assigned for their support, or rates on villages, or by making the allowances part of the Zemindaree charges.

Adverting to the description of people composing the inhabitants of the Villages, the payment of the Chokeedars by a rate, would in some measure be oppressive.

Recommends that Chokeedars be appointed for every fifty houses in each Town and Village in the district, and that the Zemindars be bound to measure off ten Biggahs of waste land for his support—also that the Chokeedars be not dismissed without the sanction of the Magistrate.

MAGISTRATE OF FURRUCKABAD.

Village Chokeedars, generally Dhanooks or Chumars.

Bulhars are entertained by the Zemindars or Farmers, and paid by them occasionally in money, but more frequently by the allotment of a small portion of land; their wives also commonly earn something as Midwives—Only one or two Bulhars in each village, and they therefore could not find time for assisting in the collection of rents.

These establishments not of much use in preventing crime, but of great service in reporting offences to the Daroghas.

They would be more alert and efficient, if paid without the interference of the Zemindar.

MAGISTRATE

MAGISTRATE OF GHAZEEPOOR, MR. W. CRACROFT.

The Chokeedars are called Goraits or Pausbans, and are of the lower class of Hindoos.

In Towns, they are usually nominated by the Chowdries or principal people of the Mohullahs, and are commonly paid in cash.

In Villages, they are nominated by the Numberdars and Putteedars, by whom they are usually allowed land for their maintenance, besides which, at the time of harvest they receive certain quantities of grain from the cultivators, and from other persons, remuneration either in food or money.

Conceives the means of support to be perfectly adequate.

Sometimes employed in the collection of rents.

Conceives that they are the principal restraint from the commission of thefts, burglaries and highway robberies, and that the information which they furnish prevents affrays.

Is of opinion that any interference with the existing establishments, is unadviseable.

MAGISTRATE OF ETAWAH, MR T PERRY.

There are no Watchmen in the Towns or Villages, but a Bulahur or Dhanook in each, whose duty it is to report all offences to the Thannah.

These are mostly appointed by the Zemindars and paid by assignment in lands —At present inadequately provided for—Sometimes, but not often, employed in collecting rents.

These establishments useful in affording prompt information to the Police.

Is of opinion that the Bulahurs are not concerned in robbing.

MAGISTRATE

MAGISTRATE OF BENARES, MR. W. W. BIRD.

Persons employed as Chokeedars are designated Goraite, Pausban, Pehroo and in some places, Doosaud.

They are mostly paid in land, whatever else they receive at the harvests, at marriages and on other occasions, is in the nature of gratuity. Inadequately provided for.

They are chiefly employed in the collection of the rents, and afford no more aid to the Police than the Landholders may find it convenient to permit.

Crimes are very regularly reported by these establishments, but they afford no assistance in preventing offences or in apprehending offenders.

Obliged to be too much occupied in labor for their own subsistence to attend to matters of Police, and too dependant on the Zemindars who use them to intimidate the Ryots and to give false intelligence regarding those they wish to injure, while they compel them to suppress information which might prove injurious to themselves.

Is of opinion that the Watchmen should receive a fixed allowance in money, which might be raised by the Collector from the Landholders at the same time with the Government collections, and paid monthly by the Magistrate, together with the Regular Police establishments.

MAGISTRATE OF GORUCKPOOR, MR. R. MARTIN.

The Chokeedars are designated Chumars, Passeys, Doosauds, Dhoneahs, Keynts, Joolaus.—They are chiefly employed by the Zemindars and have a small quantity of Maufee lands assigned them, and receive a Dustooree of grain from all the Ryots at harvest time. Those entertained in Bazars or Gunges are paid in money by the proprietors of the Bazars or Gunges.

They

They are inadequately provided for—the quantity of land assigned them being only two Biggahs—were it four, the provision would be sufficient.

They are employed in aid of the Police and by the Zemindars in the collection of their rents.

The commission of crimes is doubtless restrained by the Goraits. They are all thieves by caste and it is only the fear of detection which deters them from robbery.

MAGISTRATE OF BARELLY, MR. H. DUMBLETON.

The Office of Chokeedar is not held by any particular class of people. In some places Mewatees have been employed, and in such place burglaries have been most prevalent. Bhungees, Pasees and Dhanooks and some few of the better caste of people, are occasionally established as Chokeedars.

Large Towns are divided into Mohullahs and each householder pays a share of the expense; the Chokeedar being in general appointed by the suffrage of the residents. These are usually paid a sufficient allowance in cash.

In Villages they are appointed by the Landholders and invariably paid in land, from ten to sixteen kutcha Biggahs, being the common allowance. At each harvest the Chokeedar collects a quantity of grain assessed on each plough, amounting at the two harvests to about five seers on each plough. This is given willingly in favorable seasons, but otherwise withheld, either wholly or in part.

The means of support possibly sufficient, but inadequately secured to them.

Their condition for obvious reasons, particularly hard after the expiration of one settlement and before the conclusion of another.

The Chokeedars are constantly employed in furnishing information to the Thannahs, and in detecting and apprehending offenders.

Magistrate

Magistrate has often found them eminently useful in seizing offenders in the act.

Sometimes but not often employed in the Zemindars private concerns.

Another Officer in the Village denominated Kutwor, who is entrusted with all ministerial duties relative to Revenue arrangements.

Without Chokeedars few crimes would be reported and offenders would be concealed by the Zemindars, who are in some degree kept to their duty by the apprehension of the Chokeedars informing against them.

The regular Police establishments would seldom seize offenders without the aid of the Chokeedars.

They are of great use to travellers as guides, and in procuring supplies.

Conceives that although the condition of the Chokeedar is not worse than that of others of the same rank, still that their honesty would certainly be improved by bettering their means of subsistence.

MAGISTRATE OF THE NORTHERN DIVISION OF SEHARUNPOOR, MR. R. GRINDALL.

In the Villages the persons termed Pausbans are for the most part Bungees or Maiters, but in the towns generally of a better description of people, viz. Sikh, Syed, Mogul, Patan, Brahmin, &c. &c.

In the Villages they are entertained by the Landholders and paid half yearly in grain collected from the Farmers; each Farmer paying according to the number of ploughs in his possession.

In Towns, the Landholders defray the expense of the Chokeedars by an allowance in money, amounting to three Rupees per mensem.

In Towns, on occasions of marriage, birth, &c. they receive additional presents, which may make their situations worth four Rupees per mensem.

In

In the Villages the allowance depends in a great measure on the nature of the season, and is only paid to them on the expiration of each half year, when therefore the supply is not sufficient, the Pausban is reduced to beg, borrow or steal.

The means of support inadequate, and the people employed ill calculated to do justice to the duties imposed on them.

Believes that although they are not employed in collecting the rents, that they are not unfrequently employed by the Zemindars as menials.

Does not conceive that the commission of crimes is in any material degree restrained by these establishments, but is of opinion that if placed on a more efficient footing, they would prove most useful members of Police.

MAGISTRATE OF BOONDELKHUND, MR. J. WAUCHOPE.

The Chokeedars in Boondelkhund commonly termed Aruks or Goraits.

The latter more exclusively employed in duties of Police.

Usually entertained by the Zemindars—some of them paid in land and some in money. In a few instances maintained also by Merchants and by the inhabitants of towns.

Their means of support very unequal and in general very inadequate.

Sometimes employed in collecting rents and occasionally in the service of the Mahajuns.

Conceives that crimes are greatly restrained and the Police benefited by these establishments even upon their present footing, but if the Arauks were adequately paid and their attention directed solely to duties of Police, these establishments might be rendered much more efficient.

Chokeedars rarely concerned in robbery.

MAGISTRATE

MAGISTRATE OF MORADABAD.

Chokeedars usually selected from the lower classes—Appointed by the Zemindars.—But little under the control of the Magistrate—For the most part paid an inadequate allowance in grain—Not exclusively employed in duties of Police, but engaged in agriculture or follow freely their other avocations. Often used in collecting the rents—Chiefly of use in furnishing information to the regular Police. Of no great service in restraining offences and not unfrequently themselves concerned in burglaries and thefts.

The Chokeedars employed in Towns and considerable Gunges are of a better description of Watchmen, selected from the fighting class and being paid in money, have a sufficient object in considering the protection of their employers as their chief care; these however are few, and totally distinct from th e class whom the Landholders have been encouraged and required to maintain in aid of the Police.

MAGISTRATE OF MIRZAPOOR, MR. R. H. RATTRAY.

The Chokeedars under the general designation of Goraits are entertained by the heads of Villages and paid by money, food, raiment, land, &c.—Their allowances in general very inadequate—Frequently employed in making the collections.

No assistance from the Village Chokeedars in the prevention of crimes—very frequently convicted of theft—more frequently instrumental to the commission than the prevention of crimes.

MAGISTRATE OF ALLAHABAD, MR. T. FORTESCUE.

The Police Chokeedars in the Towns and Villages are designated Gorait and Passee.

They are usually supported by the persons in possession of the land, who assign them small allowances in land and occasionally in money. Sometimes by the villagers who allow them a trifling mea-

sure

sure of grain from their fields at stated periods, or by the Merchants on the sale of grain in the Bazars—These allowances by no means adequate.

Formerly much employed for the collection of rents, but of late this practice has been put a stop to.

Formerly the watchmen of one Village committed depredations on the neighbouring Villages, but since they have been called in on all occurrences and punished for neglect, this evil has been checked.

The small and uncertain allowances which they receive lead to the commission of crime.

Very desirable that they should be either identified with or entirely separated from the Landholders.

The former the most advisable arrangement, as susceptible of the greatest perfection.

MR. LOWTHER, ASSISTANT TO THE MAGISTRATE OF ALLAHABAD, ON DEPUTATION IN THE MOFUSSIL,

Considers a new arrangement with regard to the Passees or Watchmen desirable—At present the Passees neglect their duties, and owing to the precarious subsistence afforded them, are in a servile state of dependance on the Zemindars;—they league with thieves and dacoits and are concerned in almost every outrage and robbery that is committed.

The Zemindars not unfrequently connive at their misconduct, and entertain those of the worst character, to protect their own estates and to plunder on those of their neighbours with whom they are at variance.

Instances in case of violent affray, in which upwards of nine hundred men of various Villages assembled, fought and buried their dead, before an individual Passee belonging to these Villages either gave or forwarded intelligence to the Thannah.

Those

Those Passees whom the Assistant has questioned, denied that they receive any thing either in money or land, and declare that their services are compulsory—A few have acknowledged the possession of small barren spots of land—wholly inadequate to their support. Proposes the following rules.

1st.—All Passees as Watchmen to be nominated by the actual proprietors of estates, who will of course take their recommendation from the Moqudduns or Agents in cases where they do not themselves reside on their estates.

2d.—The Passees of each Thannah to be registered, and never altered but by the orders of the Magistrate.

3d.—The number of registered Passees attached to each Village to be settled by the Magistrate, on reference to local circumstances.

4th.—Passees to be paid monthly at the rate of 3½ Rupees, for which purpose they shall attend the Thannah monthly and receive the same from the Darogha, who shall transmit their receipts to the Magistrate, and at the same time gather information from them regarding the Police of their respective Villages.

5th.—The Collector's Tehseeldar shall monthly collect from the Zemindars, in addition to the Malgoozaree, the fixed allowance of the Passee of their Village, which no deficiency in the Malgoozaree is to effect. The Zemindars to be informed that the Passee establishment will be increased or diminished according to the state of the Police, within their estates.

6th.—The cultivation of the land interfering with the proper duties of a Passee, the Zemindars are on no account to allow them any.

7th.—Passees to be punished for neglect by imprisonment, and not corporal punishment.

8th.—No Passee to absent himself, either by day or night—to give notice to the Darogahs, of the residence of vagrants.

9.—Passees residing in Villages near to the Thannah, not to be allowed to attend on Daroghas, nor to be employed in the conveyance of prisoners, serving process, &c.

10.—Daroghas taking Nuzurana, or deducting any thing from the salaries of the Passees, on proof, to be dismissed and committed to the Courts of Circuit.

Conceives that these rules would tend greatly to the suppression of crime, and admit of a large reduction in the expense of the regular Police Establishments.

C

On the 13th of August, 1808, the Board of Commissioners addressed the Government respecting Village Chokeedars as follows:

Conformably with instructions from Government dated the 18th of April last, directed to the Collectors, to consult the Magistrates on the expediency of requiring the Landholders to entertain a specified number of armed peons in aid of the Police, and to appropriate a stipulated quantity of Waste land for their maintenance.

Have received replies only from Bundelkhund, Barelly, Moradabad, Furruckabad and Cawnpoor, but having been again called upon by Government on the 15th July, lose no time in submitting the answers.

Objections stated to remunerating armed peons by Waste lands.

1.—That waste lands are not in all places to be had.

2.—That the produce being uncertain, the reward would be unequal and might be inadequate.

3.—That if the land were obtained and the produce sufficient, the time required for Police duties would be devoted to cultivation.

4.

4.—That the plan would be a hardship on the Landholders, by loading them exclusively with a charge, which should fall on those who more immediately derive a benefit from the disbursement.—It is conformable with the usages of the country, that the Village Officers of Police should be paid by a cess on the resident inhabitants.—The Magistrate of Barelly, states that there are four thousand seven hundred and forty-six Chokeedars entertained in his district by the Landholders and other individuals, who are paid partly in land, partly in money, and partly in grain; the experience of the Board induces them to believe, that this is the universal practice of the Behar and Benares Provinces, and they suppose of the whole of the Ceded and Conquered Provinces, and not unknown to many districts of Bengal.

The Board conceive that the same rule of contribution with the requisite alteration to an entire money allowance, would be equally advisable in providing for as many Police peons as it may be necessary to keep as Pausbans, and the Board would consider it preferable to commute all payments in land or in kind for payments in money, if it did not interfere with a system interwoven with, and grafted in the custom of ages.

The Board object to stipulating with the Landholders to maintain a specified number of peons, because it would be unjust to load the Landholders alone, and because the stipulation would go to relieve the Zemindars from a general responsibility which ought never to be lost sight of, and because the stipulation should be in general terms, to enable Government, to vary the rules which may appear necessary from time to time.

The Board propose a plan similar to that instituted in Benares, and Juanpoor, and recommend that one or more Pausbans be established in each Village, and paid by the general contribution of the Inhabitants whom they are employed to protect.

Secretary

D

Secretary to the Board of Commissioners in reply to an application made by the Superintendent of Police, states, that no provision has been made in adjusting the terms of settlement with the Landholders for the maintenance of Village Watchmen ; the Landholders being left to defray this in common with every other Village charge from the general allowance of Deh Khurcha.

A true Abstract
J. SHAKESPEAR

E

Extract from a Report on the State of the Police in the Lower Provinces, for the year 1813, *dated the 30th of March,* 1814.

Para. 41.—The civil and criminal Courts teem with false evidence, and though the Judges and Magistrates seldom investigate a cause in which they have not reason to believe that the witnesses on one or both sides are perjuring themselves, yet in consequence of the difficulties experienced in proving the offence of perjury, the instances of offenders being prosecuted to conviction, are extremely rare.

42.—The Judges of Circuit cannot by the existing Regulations pass a milder sentence on a person convicted of perjury, or subornation of perjury than thirty-nine stripes of the Corah, four years imprisonment with hard labor, Tusheer or public exposure on a Jack-ass, and the process of Godna, which marks for life the infamy of the offender on his fore-head.

43.—There are gradations of this as there are of all other offences, and there appears reason to apprehend, that the great severity of the law has defeated the end in view, since prevarication and all the minor stages of perjury now pass unpunished, and the very few exam-

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ples which are made, afford a calculation of impunity to false witnesses, amounting almost to a certainty. On the other hand, the indiscriminate punishment of the offence, might render respectable men fearful of giving evidence in our Courts.

44.—The solemn admonition with which the oath is directed to be administered, is not I apprehend sufficiently attended to, and the oath itself is not I conceive of so obligatory a nature, in some respects, as it might be made.

45.—The Koranee Molahs and Gunga Jullees, receive a salary of about five Rupees per mensem and are generally ignorant, and of the lowest class of Moossulmans and Bramins; it cannot be expected that such men should administer the oath impressively, and indeed it is not an uncommon practice for them to swear, several witnesses at the same time, on a single Koran or Copper Vessel.

46.—Moossulmans are not unfrequently allowed to stand in their shoes with the Koran in their hand, whereas they ought to stand bare footed with the Book placed upon the head.

47.—At many stations situated at a distance from that part of the Ganges river, which is considered sacred, little attention I fear is paid to the water used in administering oaths.

48.—These points though apparently trivial, become of no small consideration to a witness desirous of compromising with his Gods, or with his conscience, by any subterfuge however futile."

Extract from a Report on the State of the Police in the Lower Provinces, for the year 1814, *dated the 30th of April,* 1815.

Perjury. 88." In my report on the state of the Police in the Lower Provinces, during the year 1813, I had the honor to submit certain

tain suggestions regarding this offence which were referred to the Court of Nizamut Adawlut, to report whether they would recommend any modifications of the existing rules for administering oaths to witnesses.

89.—The offence of perjury has not been treated of in the detailed reports on the prevalence of crimes which accompany this letter, because it is difficult to shew the degree to which it prevails in the different districts comprised in these Provinces. The crime is in fact common to all parts of the country, and the evil, which is generally known to be fast increasing, has frequently attracted the attention of Government, and penal enactments have from time to time been prescribed against the offence. The number of persons however who have been prosecuted to conviction for perjury is so very inconsiderable, that the fear of detection and punishment has little or no weight with witnesses interested in giving false testimony.

90.—The number of civil suits decided by the Native Sudder Aumeens and Commissioners taken on an average for six years from 1808 to 1813 inclusive, may be computed at one hundred and sixty-five thousand per annum, and allowing that three persons are examined in each suit, we have the enormous number of four hundred and ninety five thousand persons sworn by Native Agency in the course of a single year.

91.—If this calculation which is founded on records filed in the Court of Sudder Dewanny Adawlut, approaches to the truth, there can be little doubt that the frequency of adjuration must greatly diminish the solemnity of the oath and weaken that belief of its obligatory nature which alone can render it necessary.

92.—The decisions of the Sudder Aumeens and Native Commissioners being confined to petty suits, and open either to regular or special appeal, it appears deserving of consideration whether the oath

might

might not be dispensed with in the Native Courts, and whether the ends of justice would not be generally promoted by limiting the powers of adjuration to those Civil Courts, in which the European Officers of Government preside."

Extract of a Letter from the Acting Superintendent of Police, in the Western Provinces, to the Secretary to Government in the Judicial Department, dated 18th October, 1814.

Para. 2." The Vice President in Council will remark, that a question has arisen respecting the propriety of swearing persons of the Ugurwallah Surogee sect, by the figure Parushnaut, and that the Magistrate has expressed apprehensions that the measure might be productive of much discontent and possible commotion.

3.—In my letter to the Magistrate under date the 29th Ultimo, I have stated the grounds on which I conceive it necessary that persons of this case should be sworn by the above form of adjuration, and it will be observed from the Acting Magistrate's letter of the 30th Ultimo, that the Pundit of the Court has declared the water of the Ganges to be no more binding on the conscience of Hindoos of this sect, than the Koran would be on his.

4.—Adverting to the numerous sects of Hindoos in these Provinces; to the imperfect information which we possess in regard to their domestic habits; to the custom established in our Courts of swearing Hindoos of all classes promiscuously by the water of the Ganges—although the Regulations direct that the form of oath most binding on the conscience of the person examined should be administered, and adverting also to the prevalence of perjury, I beg to submit the expediency of instructing the several Magistrates to prepare lists of the different sects of Hindoos, residing within their respective jurisdictions, and to require

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the opinions of the Pundits, attached to their Courts with regard to the mode of adjuration used by each sect, when adjuring its own members either at Punchayets, religious assemblies, or on domestic occasions. This information being obtained, I would recommend that special instructions be framed in the Court of Sudder Dewanny and Nizamut Adawlut for the guidance of the Judicial Officers, in swearing prosecutors and witesses of all castes."

A true Extract.

J. SHAKESPEAR,

Superintendent of Police

To

C. M. RICKETTS, Esq.

Late Secretary to the Governor General,

FORT WILLIAM.

Dihlee Residency, Judicial Department.

Sir,

1.—I have at length the honor to transmit a report on the state of the Territory under my charge, in regard to Courts of Justice and Police, to which will be added some observations on miscellaneous subjects.

2.—I beg that you will assure His Excellency the Governor General, that the delay which has occurred in submitting this report, has been involuntary on my part, and has proceeded entirely from the continual pressure of other business more immediately urgent.

Courts of Justice.

3.—The Courts of Justice in this Territory, in the same manner as in other districts, consist of Civil and Criminal Courts.

Civil Courts.

4.—The administration of Civil Judicature is conducted by three Courts, held in the City of Dihlee; namely, the Court for Petty Suits, the Court for Ordinary Suits, and the Resident's Court.

Native Commissioner's Court.

5.—The Court for Petty Suits is under Native Commissioners. It takes cognizance of all suits of which the amount does not exceed one hundred rupees. There is an Appeal from this Court to that of the Resident.

6.—The present Commissioners are the Kazee Mooftee and Pundit attached to the Civil and Criminal Courts, who perform the duty of Commissioners in this Court, in addition to their duties as Law Officers in the other Courts.

7.

7.—Owing in part to this circumstance, and in part to the great number of suits brought into this Court, arrears are apt to accumulate, and some delay takes place in the coming on of trials.

8.—These inconveniences might be obviated by the establishment of a Court in Dihlee, with Commissioners who should have no other duty; and also by the establishment of similar Courts in other towns of the district, according to the practice which I believe prevails in other extensive districts. But these arrangements would be attended with an increase of expense, and I am on that account loth to recommend them, partly because I am not convinced that they are absolutely necessary, and partly because I have observed, that pains taken to improve the administration of Civil Justice generally tend to encourage litigation.

9.—I am well satisfied with the conduct of the present Native Commissioners, especially with that of the Mooftee, and am more surprized at the quantity of business which they perform, the latter especially, than at the existence of arrears in their Court.

Assistant's Court.

10.—The Court above designated as the Court for ordinary Civil Suits, is under one of the Assistants of the Resident. It takes cognizance of suits of an ordinary nature to any amount. There is an Appeal from this Court to that of the Resident. When the number of Assistants at the Residency is too small to admit of the allotment of the labours of one to the duties of this Court, then the duties are performed by the Resident. Arrears are not suffered to accumulate in this Court, nor does any considerable delay take place in the trial of causes.

Resident's Court.

11.—The Resident's Court is chiefly occupied in trying Appeals from the other two Courts, but if any particular circumstances render it necessary, suits may be instituted to undergo their first Trial in this Court. In this Court the Resident always officiates.

12.

12.—The following is a Statement of the Suits tried or otherwise disposed of in the Courts abovementioned since I received charge of the Residency in May, 1811. Number of Trials.

COURT FOR PETTY SUITS, UNDER NATIVE COMMISSIONERS.

13 —Causes tried, or otherwise disposed of, or remaining to be tried, from 13th May, 1811, to 10th July 1815. In Native Commissioner's Court.

Tried and decided	1,750
Settled by accommodation,	4,705
Dismissed,	2,104
Under Trial,	102
Remaining to be tried,	667

COURT FOR GENERAL SUITS.

14.—Causes tried, or otherwise disposed of, or remaining to be tried from 13th May, 1811, to 12th July 1815. In Assistant's Court.

Before the Resident, in the absence of Assistants in 1811-12.

Tried and decided,	137
Settled by accommodation of the parties	57
Dismissed,	13
Total	207

Before Mr. Alexander Fraser, Third Assistant in 1811-12

Tried and decided,	85
Settled by agreement of the parties,	66
Dismissed,	51
Total	202

Before Mr. Wilder, Fourth Assistant in 1811, 1812, 1813, and 1814-15.

Tried and decided,	798
Settled by agreement of the parties,	529
Dismissed,	237
Total	1,564

Before

Before Mr. Thomas Metcalfe, Fifth Assistant, in 1814-15.

Tried and decided, ...	103
Settled by agreement of parties, ...	69
Dismissed, ...	2
Total	174

Before Mr. Stirling, Sixth Assistant in 1815,

Tried and decided, ...	17
Settled by agreement of parties, ...	17
Dismissed, ...	1
Total	35

Grand Total of Causes settled in this Court between 13th May 1811 and 12th July 1815, ... 2182

Exclusive of innumerable proceedings on miscellaneous petitions.

Causes under trial, on the 12th July, ...	121
Remaining for trial, on the 12th July, ...	124

COURT OF APPEAL BEFORE THE RESIDENT.

In Resident's Court.

15.—Causes tried or otherwise disposed of, or remaining to be tried, from 13th May, 1811, to 12th July 1815,

Tried and decided, ...	307
Settled by agreement of parties, ...	10
Dismissed, ...	42
Total settled	359
Under Trial, ...	31
Remaining to be tried on the 12th July, ...	12

16.

16.—The number of Prisoners confined in the Civil Jail according to the latest return received, is thirty-two. Imprisonment for Debt, is as much as possible avoided, and a discretionary power is exercised to release debtors after long imprisonment, when it be proved that they have no property, and that further imprisonment is unavailing; under such circumstances, they remain liable to future prosecution for their old debts in the event of their acquiring property.

Number of Debtors in Jail.

17.—Exclusive of the Courts abovementioned, certain suits are tried by the Resident, which it is considered desirable not to bring into the Judicial Courts, such as disputes in which Members of the Royal Family, or Sovereign Princes, or Foreign Envoys are the parties.

Separate Investigations by the Resident.

18.—The Resident also, at least once a week, is accessible to persons of every rank and description, to receive complaints and petitions, and numerous disputes are settled in consequence of his investigations on petitions presented without being brought into Court. If ever the forms of Court prevent poor or ignorant people from bringing their complaints to a judicial enquiry, the mode of petitioning the Resident ensures a speedy hearing and frequently leads to a more expeditious redress.

Proceedings on Petitions.

19.—The business of Criminal Judicature and Police is conducted by the Resident and two assistants, when the number of assistants attached to the Residency is sufficient to allow two for this department.

Criminal Court.

20.—Of these two Assistants, one officiates in the Criminal Court in Dihlee, and also superintends the Police of the City and its Environs. The other performs the same duties in the other parts of the District, for which purpose he has a separate Establishment and Court, and is always either performing the Circuit of the District or

settled temporarily in that part of it, where his presence may be most necessary or most generally convenient.

21.—The Resident exercises superintendence over both, and officiates in the Trial of the most heinous offences. In the absence of the Assistants their duties devolve on him.

Number of Trials in the Criminal Court.

22.—The following is the number of Trials in the Criminal Court, between the 13th May, 1811, and the 12th July, 1815, extracted from the Records.

By the Resident in 1811, 1812, 1813, 1814 and 1815—two thousand two hundred and nineteen.

By the first Assistant, Mr. William Fraser, in 1811 and 1812—thirty.

By the third Assistant, Mr. Alexander Fraser, in 1812-13—thirty-seven.

By the fourth Assistant, Mr. Wilder, in 1811, 1812, 1813 and 1814—six hundred and seventy-nine.

By the fifth Assistant, Mr. Thomas Metcalfe, in 1814-15—six.

By the sixth Assistant, Mr. Stirling, in 1815—one hundred and sixty-six.

Total three thousand one hundred and thirty-seven.

23.—From the unremitting attention paid to the business of this Court, there are no Arrears. Trials invariably come on as soon as the parties concerned and the witnesses can be assembled.

Number of Prisoners.

24.—The number of Prisoners in the Criminal Jail, according to a return dated the 12th July, was seven hundred and fifteen.

Number of Crimes

25.—The following is a statement of the number of crimes committed in the year 1814, and brought under the cognizance of the Court.

Murders—seven.

Homicides

Homicides—seven.

Highway Robberies—twenty-seven.

Burglaries—fourteen.

Thefts above ten rupees—one hundred and nineteen.

Thefts below ten rupees—one hundred and sixty.

Receiving of Stolen Property—ten.

Violent Affrays—three.

Rapes—eight.

26.—The Police is managed, as before observed, by two Assistants; one officiating for the City and its Environs, and the other in the other parts of this Territory. The Police of the City and its Environs is in good order, and from long attention is conducted systematically without much difficulty or labour. The management of the Police in the other parts of the District is both a laborious and a difficult duty, owing to several local peculiarities. Police.

27.—The number and character of the separate States which border on this Territory, form one of the difficulties in the way of preserving a good Police.

28.—The Rulers of those States, are as follows: Neighbouring States.

The Nawab of Koonj poora, the Nawab of Indree, the Surdar of Ladooa, the Surdars of Thanesser, the Sardar of Azimgurh, the Raja of Jeend, the Bhaee of Khythul, the Raja of Pateeala, the Raja of Naba, the Khan of the Bhutees, the Raja of Bickaneer, the Plunderers of Seedmook, the Plunderers of Buhadoora, the Plunderers of Dudrera, the Nawab of Narnol, the Raja of Jypoor, the Raja of Ketree, the Thakoor of Bussao, the Rao Raja of Alwur and Macheree, Nawab Uhmud Buksh Khan, the Rao of Shahjuhanpoor, the Raja of Bhurtpoor, and Begum Sumroo; in all twenty-three separate States, touching our boundary; most of them variously connected with us by political relations, some however quite uncon-

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nected and independent, and all independent with regard to Police and the internal management of their Territories.

29.—Some of these render assistance in matters of Police when called on, and are at times really useful, especially Nawab Uhmud Buksh Khan. Many are tractable and obedient, but nevertheless the existence of so many independent jurisdictions unavoidably afford great facilities to Robbers and Plunderers, and every species of Malefactors. A few of these states are so troublesome and unmanageable, especially some of the petty districts on our Westernmost Frontier, which have thrown off the yoke of their ancient Governments, and are in fact Dens of Plunderers, that, reluctant as I am to recommend any measures which may require the movement of Troops, I foresee the probability of my being compelled to bring this subject to the notice of Government in a more particular manner.

Intermixture of Foreign Territories.

30.—In addition to the difficulty occasioned by the number and character of our Neighbours, another arises from the intermixture of their Territories with our's. On the road from Dihlee to Kurnal, on the road from Dihlee to Hansee, on the road from Dihlee to Rewaree, on the road from Dihlee to Muttra, Territories occur in which we do not exercise internal superintendence. In some of these instances the dominion of the possessors is tempered by an acknowledged dependence on our Orders, but in others it is absolutely independent.

State of Police.

31.—Notwithstanding these difficulties, the Police of this Territory is not I believe, on the whole, in a bad state.

32.—Dakoitee in any shape, is scarcely known.

33.—Murders, Highway robberies, and Burglaries, though not entirely suppressed, do not occur so frequently as might be expected

from

from the extent of the territory, the character of the people and the circumstances above mentioned.

34.—The most common crime is the stealing of Cattle, which in consequence of the facilities afforded to Thieves from Foreign Territories to carry off Cattle beyond our Frontier, it is difficult to put a stop to.

System of Responsibility.

35.—If we can boast of a better Police, than, considering the situation of our district and the character and number of border states, might be expected, it is in a great measure owing, I conceive, to the adoption of a system of responsibility, which consists in making the Zumeendars of Villages responsible for the robberies committed within the lands of their Village, unless they can shift the responsibility from themselves to others, by delivering up to justice the guilty individuals or by tracing the robbers to other Villages.

36.—By Zumeendars, I mean Village Zumeendars residing in their respective Villages, and consequently justly responsible for acts which cannot be practised without their connivance.

37.—This system not only makes the Zumeendars interested in preventing Robberies in the Lands of their own Villages, but secures their zealous and anxious assistance in the discovery of the perpetrators of such Robberies; and instead of all the Villages of the Country being in league for the purposes of general depredation, one is set against the other for their own security.

38.—The system of responsibility seems to have prevailed formerly in England, where districts were responsible for the crimes committed within their limits, and it exists in Ireland, I believe at the present day, with regard to some violations of the Revenue Laws; for instance, illicit distillation.

39.—It seems to have been adopted without hesitation, wherever the state of society has required such a system. And probably no state of society was ever more suitable to such a system than that which at present exists in this part of India. This remark and the following observations do not apply to the state of society in towns, but to that in the Country.

40.—The inhabitants of the Country are collected in Villages, and the Country is occupied by the lands attached to those Villages. Detached dwellings and cottages are unknown with the exception of a few Fakeers' Huts scattered rarely on the road side, which can easily come under the cognizance and care of the Zumeendars of the lands in which they are situated.

41.—If Robberies be committed, they must be committed by the inhabitants of the Villages, and they cannot be committed by the inhabitants of the Villages without being known to all the other inhabitants of the same Villages.

42.—Such is the confined state of society in the Villages that every one knows what his neighbour does. No one could follow the profession of a robber without its being known generally to his fellow Villagers. No one could go out robbing at night, or bring home stolen goods to his house, without a knowledge of the circumstances getting abroad in the Village, and being known to the head men of the Village, whose duty it is to be acquainted with the characters and pursuits of the inhabitants of the Village, and who cannot fail to know them.

43.—Whenever professed Robbers reside in a Village, the other Villagers are so far accomplices in every robbery committed by those Robbers, that if not concerned in the actual perpetration of the Robberies, they know of their perpetration, and know that professed robbers reside in their Village. The head men of the Village

lage do more : they participate in the profits of the plunder, for no head men of a Village would allow professed Robbers to reside in the Village without sharing in their gains.

44.—The truth is, that every Village in this part of India, was before the introduction of our Government, a Den of Robbers. The measures pursued by successive administrations since the establishment of our Government, have greatly reduced the practice of Robbery, but generations must pass away before the propensity can be rooted out, and I have no doubt that if a favorable opportunity were to present itself, the present inhabitants would revert to their former habits. This description is meant to apply universally to all the Villagers of this Territory, from one end of it to the other.

45.—There are two principal modes in which whole Villages may be said to be accomplices in Robberies, either in the case before mentioned, where the Robbers reside in the Village with the knowledge of the Inhabitants, or in the case where the Robbers come from a distance, and put up at a Village from which they start for the accomplishment of their purpose.

46 —It frequently happens that robberies are committed by persons apparently coming from a great distance, but Robbers coming from a distance, cannot effect their purpose without a resting place near to the scene of their intended exploit. The Village which affords this resting place, gives it, knowing the use that is to be made of it, and becomes a party in the crime, even though none of the Village be actually present at the commission of it.

47.—The affair is generally managed thus. The Robbers come from a distance, take a rest at a neighbouring Village, commit the robbery, take another short rest, and are off with the plundered property. In such cases if it be ascertained what Villages afforded shelter to the robbers, there is sufficient ground in reason to make that

Village

Village responsible in the value of the property robbed, or even to inflict much heavier penalties.

48 —The practice of making Villages responsible for the robberies of those whom they had harboured, must tend greatly to cure the evil, both by deterring Villages from giving such shelter, and by leading to the detection of the Robbers.

49.—Robbing in the City of Dihlee was formerly organized in a systematic manner. Almost all great Robberies were perpetrated by Villagers from the Country. The City was shared in districts among the Villages of the Environs, and the plunder of particular districts was the property of particular Villages; one side of the Town belonged to Villages in the Doab beyond the Jumna, in league with some Villages on this side of the River. The latter furnished the resting places without which the depredations of the former could not have been carried on.

50.—There was no security against Robberies in Dihlee, by Robbers from without the walls, until measures were taken, founded on attention to the facts above mentioned.

51.—At present owing to the establishment of a system of responsibility, the Robberies committed in the City, are mostly confined to Vagabonds within the City, and are seldom more than petty thefts. The extensive system of depredation from without, which formerly prevailed, is suppressed. But there is not the least doubt that on the slightest relaxation of the System of Responsibility, the villagers of the environs would eagerly revert to their former habits.

52.—It may be stated as an objection to the system of responsibility, that the innocent may sometimes suffer. In order to guard against this evil, it is necessary that discretionary power should be entrusted

trusted to local authorities to enforce or relax, or suspend the operation of responsibility, according to the circumstances of the case.

53.—Otherwise a practice calculated to produce great general good, may undoubtedly become the medium of occasional oppression.

54.—The mode in which this matter is managed in this Territory is as follows. Whenever any robbery is committed on the high road, the person robbed gives notice to the village in whose lands the Robbery has been committed. It is the duty of the Villagers instantly to turn out and endeavour to trace the Robbers. If the traces go to their own village, or remain within their lands, then they are responsible. If they can trace the Robbers into the lands of another Village, then the Villagers of that other village take up the pursuit, and the Villagers of the first village are exonerated from further trouble and responsibility. The Villagers of the village to which the robbery has been traced, are called on by the Villagers of the first village to acknowledge the traces, and these being acknowledged, the Villagers of the second village are bound to trace the robbers further, or in the event of their not being able to do so, they become responsible. In like manner the robbery is traced onward, until the traces either lead clearly into some village, or at least cannot go further ; and then the Villagers of the last village become responsible.

55 —The nature of the responsibility is either to produce the individual Robbers, so as that they may be prosecuted to conviction, or to pay the amount of the property stolen.

56.—A discretionary power is exercised with regard to enforcing the latter obligation. Under some circumstances it is indispensible; under others, it would be manifestly oppressive ; some times the case is doubtful. When the amount of the property plundered is inconsiderable, it is desirable to enforce the rule for the sake of the principle.

Where the value is so great, that a fine to that extent would fall heavy on the village, there is room to pause, and to require further evidence of actual participation or connivance in the robbery before proceeding to enforce so heavy a penalty.

57.—But it is desirable, that the sense of responsibility should be felt by the Villagers, and that they should understand any relaxation of the system to be an indulgence.

58.—It frequently happens that the Robbers are delivered up to avoid the penalty which would otherwise be inflicted on the village.

59.—This responsibility and the practice of tracing are not of new date. They are established customs of the Country; and so much has always been considered to depend on good tracing, that Men particularly skilled in that art, are distinguished by the appellation of Khojees or Tracers. These Khojees are almost as sure as hounds who follow by scent. A Khojee will find a trace, where it would be invisible to a common observer. Neither rivers, nor jungles, nor rocks where no impression of the foot can be made, will divert him from his purpose. He is almost sure to recover the trace, whatever interruptions may occur; the greatest difficulty to a Khojee is the high road, where the traces of numerous men and animals are intermixed, and where a particular trace may be lost irretrievably. But even in this case, the Khojee will follow the high road and discover with wonderful acuteness, where the old traces strike off. Robbers in general avoid the high road because they are more liable to detection by following it, and in an unfrequented track a Khojee is almost sure of following up any trace once discovered.

60.—The system of responsibility is not unpopular in the Country except with the Robbers themselves, because every body in his turn may benefit by it. Responsibility generally falls on the guilty.

It

It is rarely that the innocent suffer. The persons who are made responsible are almost always in some degree implicated either directly or by connivance. If there be persons whom they know to be more deeply implicated than themselves, they can reimburse themselves at the expense of those persons, or if they themselves be entirely innocent, they will in all probability discover the guilty, and compel them to reimburse them by a threat of otherwise exposing them to public detection and consequent punishment. Even if any one should innocently suffer some loss, at any time, in consequence of the operation of responsibility, he easily consoles himself by reflecting, that this is a tax which he pays, once perhaps in his life, for the security of his property at all times; and that if he in his turn should have any part of his property stolen, he is sure of redress if it can be properly traced.

61.—It is not to be supposed that the practice of recovering the value of the property tends to facilitate the escape of the Robbers. It may rather increase the probability of their apprehension, for as Zumeendars are released from their obligation to pay the value if they deliver up the Robbers, the hope of release from the fine operates like the hope of a reward to induce them to exert themselves in seizing the offenders.

62.—Another excellent engine of Police, much used in this Territory, is the outcast tribe of sweepers. These people otherwise so degraded, are in this instance of considerable consequence; and perhaps it is one of the effects of reposing confidence in them, that in general they may be relied on with security.

Instrumentality of sweepers in the Police.

63.—The Police of the city of Dihlee is carried on principally through the means of sweepers.

64.—There are public Sweepers to every street, who have access to all the houses. The Males to the Male apartments, and the Females

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to the Female apartments. These are assembled every morning at the Police Office of their quarter, and are bound to give intelligence of every thing of consequence that may have happened on the preceding day. Through this channel of intelligence many circumstances are brought to light, which would otherwise remain concealed, and few circumstances escape detection which it is necessary to know.

65.—The business of sweeping in a particular street or quarter, is a species of property which is regularly bought and sold. The sweepers are paid by the inhabitants, but are not dependent on them. They consider themselves as confidential Officers of Government, and may in general be depended on as such.

66.—The Police of the Country is also in great measure carried on through the same channel. The sweepers of the Villages report at the Police Offices the occurrences in their respective villages. Much useful intelligence is gained in this way, but in the villages the sweepers are in some awe of the Zumeendars, and less independent than in Dihlee, where the system appears to be more perfect than in any other part of this Territory.

67.—The system existed before the establishment of our Government, but its efficiency has increased with the increased efficiency of our Police, in other respects. The same system probably exists in other districts, but whether it does or not I cannot say.

Miscellaneous observations.

68.—I now proceed to submit a few unconnected miscellaneous remarks.

Assistants.

69.—The Assistants of this Residency are for the most part employed in Judicial and Magisterial Duties, their services being more required in those departments than in any other. All at present on duty with the Residency are employed in those departments, with the exception of the first Assistant, Mr. William Fraser.

70.

70.—The first Assistant has the charge of the Revenue Department to which at present his labours are devoted ; but Mr. Fraser has at times given his aid in the Courts and the Police, and is always ready to promote the public service in any branch. His ardent spirit and his superior abilities are well known to His Excellency The Governor General, and it would be presumptuous in me to call His Lordship's attention to a character, already established in public estimation beyond the reach of my praise.

71.—The same may be said of the Honorable Mr. Gardner, the second Assistant, who is absent from the Residency, engaged in the performance of more important duties. When present at the Residency he was employed, first in the management of the Revenue and Police of Hureeana, and subsequently in the superintendence of the Police of the District, and his conduct was frequently honored with the applause of the Government in this Country and of the Honorable the Court of Directors.

72.—Mr. Alexander Fraser the Third Assistant officiated in the Civil Court for some months after my arrival in 1811, with distinguished zeal, ability and judgment. He was then carried away by sickness. He returned to the Residency in 1812, and for some time officiated in the Criminal Court, with the same excellent conduct and disposition as before, but was again called away to attend a sick Brother. Since that time his return to his Duties has been prevented partly by affectionate attendance on that Brother, a young Man of incomparable excellence who was prematurely snatched from this world in the spring of Life, and partly by severe and dangerous illness, which has for a long time deprived the service of one of its brightest ornaments. Mr. A. Fraser is now on his way to rejoin the Residency in a doubtful state of health, but nothing can repress his noble anxiety to be again engaged in the discharge of his duty to his Employers.

73.—Mr. Wilder the fourth assistant, was employed for a considerable period in the Civil Court, subsequently in the Criminal Court and Police, and latterly on a deputation with Magisterial Powers in the District, and the charge of the Police of this Territory exclusive of the city and its Environs. The Returns of the Civil and Criminal Courts afford abundant proof of his industry and zeal. This Gentleman has served under me unremittingly for full four years, in a manner which, had his situation been such as to bring his exertions immediately under the notice of Government, would have placed him, I have no doubt among the first characters in the Judicial Line. I have observed his uniformly excellent conduct with admiration, and I feel it to be my duty to recommend him in the strongest terms to his Excellency the Governor General as eminently qualified by zeal, ability, judgment and experience for either the Political or the Judicial or the Revenue Branch of the Service.

74.—Mr. Thomas Metcalfe, the fifth assistant, at present officiates in the Civil Court; and it is but justice to say of him, that he is applying himself to the duties of his office with zeal, industry and ability, and that he promises to be a valuable Servant of the Honourable Company.

75.—Mr. Stirling the sixth assistant is at present employed in the Criminal Court and the Police of the city and its Environs, and has also officiated in the Civil Court. The character of this Gentleman is too highly established to require to be raised by my Testimony in it's favour—Nevertheless it is my duty to state, that his zeal, ability and judgment in the performance of his official duties in the public service, do not fall short of the distinguished excellence which he displayed in his collegiate career, and it requires no great foresight to perceive, that Mr. Stirling will be one of the most eminent of the Servants of the Honourable Company.

76.

76.—From the preceding statements his Excellency the Governor General will perceive, that the assistants at this Residency perform duties of the highest description; such as are seldom performed by servants of the same standing in other districts. Assistants with salaries of 500 rupees per mensem, perform in a great measure the duties of Judges and Magistrates. I venture to bring this point to His Excellency's notice, in the hope that the claims of the assistants of this Residency to future consideration and promotion in the service, in consequence of the nature of their duties, may be favorably appreciated.

77.—The existing arrangement for the division of labour at this Residency is in my opinion susceptible of improvement.

78.—At present the division of labour is as follows:

79.—The Resident has in his own hands the exclusive management of the Political Department, the Treasury, and the Pay Departments, the Correspondence with all Departments, the Court of Appeal, and various indefinable Duties, which arise out of his Situation as Civil Chief in this Territory. He also officiates occasionally in the Criminal and Civil Courts and takes a share in the Revenue Department, in consequence of his general Superintendance and responsibility. In the absence of any of the Assistants, his duties are generally increased by the necessity of providing for the execution of the duties assigned to such Assistant.

80.—The First Assistant has charge of the Revenue Department, including Land and Customs.

81.—The second and third Assistants being absent, the fourth Assistant has charge of the Magistrate's Court and the Police of the Territory exclusive of the city and environs.

82.—The fifth Assistant officiates in the Civil Court.

83.

83.—The sixth Assistant has charge of the Criminal Court and the Police in the City.

84.—This account shews employment for four Assistants, and considering the exigencies of the public service in other quarters, I think that four Assistants are sufficient, provided that they be always present.

85.—There are seven Assistants at present nominally on the Establishment, of which three are absent.

86.—It is much more essential, for the good management of the district, that a fixed number of Assistants should be always present, than that there should be a great number of Assistants nominally attached to the Residency.

87.—Each Assistant has a separate department to manage. Whatever number be fixed, a division of labour could be made suited to that number. If the number always remain the same, let it be great or small, business would go on in a regular course; but if the number fluctuate, business must be in some measure deranged, departments become vacant, and additional, perhaps insurmountable labour, fall on a diminished number of Labourers.

88.—I would undertake to manage all the business of the Residency and the Territory in a tolerable way, through the Agency of natives alone, supposing that I could not be allowed the benefit of any European Assistants; but supposing a number of Assistants to be appointed and arrangements made accordingly, and those Assistants afterwards to be suddenly removed without their places being supplied by others; a total derangement would take place in the management of the Territory and great inconvenience ensue.

89.—In urging the expediency of having always a fixed number of Assistants present, however limited, I am thinking only of the welfare

fare of this district, which of course must yield to the exigencies of the State, whenever these may require the temporary absence of the Assistants.

90.—According to the present division of labour, though all the Assistants are understood to act under the orders of the Resident, the First Assistant, ex-officio, has charge of the Revenue Department, including both land and customs.

91.—This arrangement appears to be objectionable for the following reasons.

92.—The first Assistant cannot sufficiently attend to the Land Revenues and Customs at the same time, for whilst a due attention to the latter requires in my opinion, his almost uninterrupted residence in Dihlee, the former demands that he should almost always be among the Land-holders in the country.

93.—Again the Revenue Department being entirely in the hands of the first assistant, he has ample occupation in that Department, and cannot be expected to take a share in any other, and even in his own Department, on account of the extent of the Territory under his charge, his superintendance cannot always be given where it is required.

94.—At the same time the Police of the whole Territory with the exception of the City and its environs, is under one of the Assistants, and that also forms too extensive a charge, that is to say the extent of Territory removes the superintending officer to too great a distance from most parts of the district under his charge, and the benefit of his local superintendance does not sufficiently pervade every part.

95.—Local superintendance is the point in which European Officers

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are most useful, and the smaller the space within which the superintendance of any Officer be confined, the more efficient will it be.

96.—It therefore appears to me, that a more beneficial arrangement might be made by a division of the Territory into parts, each part to be under the superintendance of an Assistant acting under the orders of the Resident, both in the Revenue and the Judicial Department.

97.—I am confirmed in this idea by a conviction that an union of authorities in the hands of European Officers is better for the State than a division of them. The efficiency of the Police would be much aided by the possession of authority in the Revenue Department, and the efficiency of the Revenue Authority would probably be increased at the same time. The differences which exist between the Native Officers of the two departments, who look up only to their immediate superintendant, and consequently consider themselves as serving different masters would cease to exist ; as the Native Officers of both Departments would be under the same superintendant.

98.—With reference to these considerations, I am of opinion, that the following would be a more beneficial arrangement for the duties of the assistants to this Residency than that at present existing.

99.—The separate charge of the Revenue Department at present vested ex-officio in the first Assistant to be abolished. The Territory of Dihlee, exclusive of the City and its environs, to be formed into three or at least two divisions, each to be under a Superintending Assistant, Officiating both in the Revenue and Judicial Departments, and acting under the orders of the Resident Two Assistants or at the least one, to assist the Resident in the Revenue and Judicial Departments in the city and its environs.

100.—This arrangement would require and provide for the services of at the most five, and at the least three Assistants in the Judicial and Revenue

Revenue Departments, each having a distinct office. In the absence of any one his duties would be performed by one of the others or by the Resident.

101.—If ever a greater number be present, those above the numbers mentioned might be employed, either in the Political Department, or in giving greater aid to the Judicial and Revenue Departments.

102.—By the arrangement above proposed, the advantage would be gained of having a British Officer of Government in the exercise of local superintendance, in every part of the district at all times.

103.—This local superintendance I consider to be highly important, as a check on the Native Officers of Government, and as a resort easy of access to the aggrieved.

104.—In addition to the constant presence of the Assistants in some part of their divisions, it should be a part of their duty to move about, in order that the advantage of their presence might be communicated frequently to every part.

105.—In suggesting this new modification of the duties of the Assistants, I have no wish, even if it be approved, that it should take place before the removal of the present first Assistant to a higher station. Mr. Fraser has held the separate charge of the Revenue Department for many years, and most probably would not like to relinquish it.

106.—I take this opportunity of noticing, for the information of His Excellency the Governor General, the great oppression which prevails in the practice of pressing villagers at the several villages on the high road, to carry on their heads the baggage of travellers, from place to place, most commonly without pay. Begaries.

107.

107.—In the exercise of this supposed right, very distressing cruelties are committed. Women are more commonly employed than men. Women far gone with child, or women with infants at the breast, are often to be seen, labouring under loads with a burning sun above their heads, a scorching sand beneath their feet, and a fiery wind blazing round their bodies. It cannot fail to happen, that death must sometimes be the consequence of such exposure.

108.—The persons who benefit by this practice are all those, high or low, who have power in the eyes of the people and chuse to exercise it. It is only amongst the high and considerate that any moderation is to be expected; the low, whether sepoys in the Military Service, or Burkundazes or Chuprasees in the Civil Service, invariably exercise the power without limitation.

109.—As a sample of the abuse which is common in this practice, it may be mentioned, that sepoys are frequently met, with poor villagers, dragged from their cultivation, and carrying by compulsion the Sepoys' musquets. I have no doubt that abuses equally reprehensible are committed by persons in the employ of the Civil Department.

110.—No abuse can be greater, than that committed by the European Traveller of rank, who is either ignorant of the oppression committed in his name, or thinks merely of his own convenience—unless he be very anxious to prevent such abuses, wherever his power is respected, the country will daily be laid under contribution, the labourers of every village will be taken from their labour, and the work, perhaps very essential, and critical of every village will be at a stand in order to supply the exorbitant demands of the gentleman's servants, when this mischief might all have been prevented by a previous arrangement for the supply of Carriage or Cattle, in every respect more convenient for the Gentleman himself, but not so to his servants

vants who frequently charge him for the payment of the unfortunate villagers, without paying them any thing.

111.—Many villages on high roads have been abandoned, owing to the oppressiveness of this system, and petitions are constantly received from villages so situated, complaining of the hardships which they suffer, and imploring to be relieved from them.

112.—That the system is extremely oppressive there can not I think be a doubt ; and this is a sufficient reason why it should be completely abolished, unless it be necessary.

113.—Some people are I believe of opinion, that it is necessary, but I have never heard any sufficient reason for the maintenance of that belief.

114.—It is not necessary for those who have not the power to press, and do not carry with them the dread which accompanies the servants of Government. They are obliged to travel quietly without demanding the services of every village on the road. The man, who can afford it, has his camel, or his packhorse, or his bullock, or his servant boy, or dependent relation, to carry his baggage, and he who cannot, carries his own bundle.

115.—Why people cannot do the same because they are in the employ of Government, it is difficult to understand ; but that the lower classes will not, as long as they have the power by taking the name of the Government and working on the fears of the people, to have their baggage carried for them gratis, is natural and self-evident.

116.—If this practice is to be put down, it will require all the authority of Government to effect it. An attempt has been made in

 this

this territory to suppress it, but the success of it has been far from complete.

117.—The truth is, that all Natives in Office, the instruments by which the suppression is to be effected, feel an interest in maintaining the practice. Almost every European Gentleman thinks it convenient, and inclines towards it, and the lower classes of Natives in our service, Civil or Military, are the most determined in maintaining it, because it gratifies both their pride and their avarice.

118.—A Civil Officer of Government could answer for suppressing the practice in his own district, if the exercise of it were at present confined to servants European or Native on the Civil Establishment, but as the practice is exercised most generally by the Military branch of the service, the suppression cannot be effected without the zealous assistance of the Military Authorities.

119.—The zealous assistance of the Military Authorities is not to be expected, until they see, that it is really the wish of Government to suppress the practice. If endeavours be made to do away the practice in one single district, say Dihlee, and it be allowed in every other, the Military Authorities must be disposed to attribute the singular attempt at suppression, to the whim of an individual, rather than to the wish of the Government, and those stationed in that particular district, would think it hard, that they should be deprived of a supposed advantage enjoyed in every other district in the country.

120.—An order of Government in the Military and Civil Departments, calling on the Military Authorities to prevent any one under their orders from attempting to obtain pressed Begarees, and on the Civil Authorities to prevent the pressing of Begarees by any person whatsoever in their respective districts, would no doubt be effectual, and appears to be necessary if it be intended to abolish this oppressive practice.

121.

121.—The preceding observations have reference exclusively to the practice of pressing men, women, and children, from towns and villages on the high road; for the purpose of carrying the baggage of privileged travellers from village to village, generally without remuneration.

Pressing of carriage and workmen.

122.—I have now to remark on the general practice of pressing when any thing is required for Europeans for hire, or even for purchase.

123.—Any European requiring either carriage for his baggage or workmen of any kind is frequently in the habit of applying to the Civil Authorities, instead of endeavouring to procure what he may want by his own exertions. Whether it be a cart or a camel, or a bearer, or a coolee, or a mason, or a carpenter, or a tailor, or a shoemaker, or a saddler, the man or the thing must be pressed by an act of the local authority.

124.—It is undoubtedly a great evil and oppression, that a man should be liable to be seized in his shop, where he may be working willingly for one person, and taken away to work in another place for another.

125.—And it is undoubtedly a great oppression, that a cart or a camel, or any species of carriage after being let with the Owner's consent to one man, should be seized, and without the consent either of the owner or him to whom it was let, be pressed into the service of another.

126.—It is a shocking act of tyranny, that the goods of a merchant, proceeding on their journey should be thrown down in the street, and the carriage be carried off, because some Gentlemen, going on a party of pleasure, have applied for carriage.

127.

127.—Knowing that such things take place, one cannot but be most anxious to see them abolished.

128.—As far as depends on me, I do my best to alleviate the burthen in practice as much as possible; some things I endeavor to prevent in toto, others to modify and make as light as possible.

129.—But as long as the practice be tolerated, I do not see how the abuse of it can be entirely prevented.

130.—The question is can the practice be entirely abolished ? This question it is not easy to answer.

131.—Desirable as it would be to abolish it, I cannot take on myself to say, that it is practicable. Neither can I say that it is impracticable.

132.—On the one hand, general reasoning argues that it must be practicable. On the other, particular circumstances make that point doubtful.

133.—For instance, there may be and I believe there is, generally at this place a greater demand for carts than the supply can answer. If a Native have his choice, whether he will serve an European or a Native, he will prefer a Native Employer. In this case how is an European to obtain a cart for hire ; unless by bribing by a higher rate of pay, which would give rise to impositions without end.

134.—Again, the Natives of the town of Dihlee can give employment to all the bearers procurable. The same preference to Native Employers exists in this instance as in the former. How is the European to procure bearers ?

135.—A similar difficulty would exist in almost every case

136.—On the whole I am inclined to think, that in the event of the abolition of the practice of giving the aid of authority to supply the wants of Europeans, Europeans would for some time suffer considerable, and in some instances perhaps extreme inconvenience, though in the end things would probably find their level.

137.—But as long as aid be afforded for the supply of Europeans, they will not be at the pains to supply themselves in any other manner, and the least accommodation in that respect tends to perpetuate the practice.

138.—It is for the wisdom of Government to decide, whether the abolition shall be effected, or whether the practice of pressing shall be continued.

Slave Trade.

139.—The traffick in slaves was carried on here till a late period, and the measures which were adopted to check it, by imposing high duties on the sale, had not the effect of preventing it.

140.—Since however authority was given by Government to suppress the traffick entirely, and to prevent both the sale and the importation of slaves, it has wholly ceased.

141.—At first measures of severity were necessary, and several persons were punished by imprisonment for short periods for evading the rules promulgated.

142.—Since it has been manifest that evasion will not be tolerated, it has ceased to be necessary to punish.

143.—In order to convince all dealers in this traffick, that no advantage could be gained by persisting in it, all persons imported as slaves were invariably taken from the importers, and supported at the expense of Government, until they could be properly disposed of.

144.—Enquiries were carefully made respecting their homes and their parents, and pains were taken to ensure their safe return.

145.—In almost every instance they were Natives of foreign countries, and in cases where accredited agents of those countries were residing at Dihlee, the liberated slaves were given into their charge, to be restored to their respective homes; and receipts were obtained from the heads of Governments acknowledging the safe return of their subjects.

146.—In cases where there were no accredited Agents at Dihlee, the liberated were sent with proper care and appropriate communications to the Chiefs of their respective Countries.

147.—In both ways several gratifying acknowledgments were received from foreign Princes, and by these means the determination of the British Government to prevent the traffick in slaves became generally known, and was calculated to serve both as an Example to other Governments, and as a warning to the traffickers in human flesh of the inutility of their efforts.

148.—In cases where there were no means of returning the emancipated slaves to their homes, or where circumstances rendered it inexpedient to attempt it, they were placed as servants in respectable families in Dihlee, on the express condition that they should never be considered as slaves, and that they should be at liberty to quit their situations at their own pleasure when of an age to judge for themselves; and engagements were taken from the families in which they were placed to treat them kindly, and provide for them, and have them married at a proper age.

149.—The system of slavery existing in India has many advocates, compared with the slavery of the West Indies—the domestic slavery of

of the East is undoubtedly light and tolerable—slaves are generally treated like servants, frequently like children, and sometimes they become heirs to their masters.

150.—But rare instances of great good fortune, or even general instances of good treatment, are not sufficient to counterbalance the indisputable evil and degradation of being the property of another; and the dreadful practices to which the existence of a market for slaves must give rise, such as the kidnapping of children, and the tearing of them from their parents, country and homes, the loss of the patrimonial property to which they would have succeeded, and of the religion of their forefathers.

151.—The quantity of human misery which must have been effected by these means, could never be recompensed by the comparative mildness of the domestic slavery of the East.

152.—Formerly a number of boys, some of them very young children infested the streets, fairs and other public places of Dihlee to the great annoyance of the Inhabitants. House of Industry.

153.—They were denominated Jebkuttras, literally pocket-cutters, answering to pick-pockets. They were exceedingly expert in their profession. From being known however they were constantly apprehended in consequence of thefts committed on fair days, and brought before the Court.

154.—On account of their infancy they were generally pardoned, or after receiving a whipping were dismissed.

155.—In this manner they never relinquished their practices and their numbers continually increased.

156.

156.– To condemn them to confinement in the jail would have been to ensure their eternal profligacy, and yet it was necessary to confine them somehow to prevent their progress in vice, and it was desirable to give them habits of industry in lieu of those of idleness and crime.

157.—With these views all the boys taken in acts of theft, were transferred to a House of industry, and made to learn the easiest manufactures, blankets and carpets, under proper masters.

158.—The first effect of this institution was the almost entire abolition of the practice of picking pockets by boys. The established gangs were gradually apprehended, and on conviction transferred to the House of industry, and others were deterred from commencing the same course.

159.—The second effect to be expected is the reform of the boys, of which rational expectations may be entertained.

160.—Several have been released at different times since the establishment of the institution, and of these none have re-appeared before the Court, but some of them are known to earn their livelihood by the art which they acquired in the house of industry.

161.—In consequence of the encouragement afforded by these instances, arrangements have been lately made for the release of all who have acquired a competent knowledge of the business taught at the institution.

162.—Some have engaged for employment in the different manufactories of the city, and in order that there may be no plea for a return to idleness and vice on the ground of want of employment, a

manufactory

manufactory has been established in the city, at which all will receive employment, as free workmen, who cannot obtain it more to their satisfaction elsewhere.

163.—It is perhaps peculiar to this district that we never punish by death. I do not know of any instance within the last nine years, of the infliction of the punishment of death. No punishment by death

164.—As this is probably the only part of the British Dominions, where for so long a period justice has been administered without a single instance of the punishment of death, it may be proper to explain the cause of this deviation from the established practice of other provinces.

165.—In attempting this explanation I can only speak for myself. I am not competent to explain the causes which operated to produce a similar effect during the Residency of my predecessor, though I am happy to have the sanction and example of so eminent a person for the course which I pursue.

166.—The following considerations influence me in the conduct which I pursue.

167.—The awful nature of the responsibility of putting fellow creatures out of this world, the act depending chiefly if not solely on me. The possibility by an error in judgment of condemning an innocent man. The probability of the escape of a number of criminals by compassionate acquittals, if it were necessary to put all to death that might be found guilty of certain crimes. The belief that the punishment of death is not necessary for the general good of the community.

168.—According to the constitution of our courts here, the sanction of the King of Dihlee is necessary for the death of a criminal.

169.—This sanction would be either a matter of form or the power might be exercised injuriously, and nothing in my opinion could be more injudicious than to accustom the King to the exercise of any of the real powers of sovereignty, for which he is rendered totally unfit by many circumstances in his situation.

170.—If this power were really left to the King, the exercise of it would be open to corrupt influence, it would therefore always be found necessary to interpose the effectual advice of the Resident.

171.—In like manner the opinion of the Native Law Officers, if it were to operate conclusively, would also be open to corrupt influence, it would therefore require the check of the final judgment of the Resident.

172.—In consequence, the responsibility would rest with the Resident, and where the life of fellow creatures is at stake, the responsibility is awful.

173.—Nevertheless I would undertake this responsibility, if it appeared to be necessary for the good of the community and should hold it to be sinful to put to hazard the lives of peaceable subjects, from a reluctance to put to death murderers.

174.—But it does not I confess appear to me, that the punishment of death would have a greater tendency to prevent murder than that punishment has which we here inflict.

175.—Murder I conceive to be committed under the influence of passions, which no fear of punishment can at the time counteract; committed under the influence of all conquering passions, sometimes openly, but more frequently with the expectation or hope of escaping detection.

176.

176.—Whatever operation may be derived from the fear of punishment in deterring from the commission of murder, would it is probable, be produced more by the certainty of severe punishment than by the possibility of death.

177.—In this point of view the punishment of death is the least certain of any, because many considerations combine to prevent the infliction of a punishment so awful and so irreparable in its nature.

178.—There are several persons now under punishment for murder, who if death had been the punishment adjudged to that crime, would have escaped; because, though in each case there were proofs sufficient to make the judge quite easy in assigning a punishment, from which the parties concerned might be relieved on any circumstances appearing to throw a doubt on their crime, yet he would not have ventured to inflict on them a condign punishment, from which not even proofs of innocence could subsequently have released them; for it is supposed, that even in England, where endeavours beyond reason are generally made to allow criminals to escape from the punishment due to their crimes, even there, men have suffered death whose innocence has afterwards been proved.

179.—The severest punishment inflicted in this territory is solitary close confinement in chains for life; and so great is the horror of this punishment, that persons condemned generally petition that they may be hanged instead, and some have tried to put themselves to death.

180.—I am of opinion, that this punishment operates as much to deter from the commission of murder as any other punishment; that it is just as efficacious in preventing crimes, and much more certain in punishing them, than a system of condign punishments, which puts it out of the power of man to remedy the effects of possible error,

ror, and must in every humane disposition lead to an extreme caution, injurious perhaps to the objects, which the infliction of punishment is intended to accomplish.

Effect on the minds of the people of our system of Judicature.

181.—It is a most interesting and important question, whether the people are happy under our Government or otherwise, and whether especially our judicial system is calculated to please them or otherwise.

182.—There seems to be reason to apprehend that they would be happier under a just and well regulated Native Government, such is sometimes though rarely to be found in India.

183.—Our courts which are meant to perform so much good are certainly very unpopular.

184.—There is a something in them not suited to the taste of our subjects; but it is easier to see that they are unpopular than to point out a remedy for the evil.

185.—Our courts are scenes of great corruption. The European Judge is the only part of them that is untainted. He sits on a bench in the midst of a general conspiracy, and knows that he cannot trust any one of the Officers of the Court.

186.—Every one is labouring to deceive him and to thwart his desire for justice. The pleaders have no regard for truth. Not content with arguing in support of the cause of their clients on true statements, they found their reasoning in the most shameless falsehoods.

187.—These difficulties the Judge has to encounter. He cannot depend in the slightest degree on any part of the statements of the pleaders; nor on any information from the Officers of his Court, nor on any evidence from the witnesses. He undertakes to do justice with every one about him conspiring against it.

188.

188.—Another consideration is, that European Judges set about investigations with European ideas, not always applicable to the local disputes of this country. Hasty decisions may be given without sufficient attention to local usages, and the Natives are in consequence disgusted. And this is the more likely to happen from the cause before mentioned, namely that it is dangerous to look to any Native Counsellors for Assistance.

189.—Thus with inexperienced Judges, corrupt Officers, rascally pleaders, and perjured witnesses, Justice is not administered in such a manner as to be an acknowledged blessing to the people. The Courts are dreaded as places in which a man may be ruined. They are considered as sources of litigation and disturbance to the peace of families. They are spoken of with horror by those who have suffered, and with derision by those who have not. The advantages which undoubtedly attend them to a certain degree are lost sight of; and the expression of real respect or admiration is never heard. The pleaders and attornies are looked on as so many pests to society and yet alas they are constantly employed.

190.—The most favorable notion that the Natives entertain of our Courts is, that they are lotteries, in which a person by taking a chance, may perhaps draw a prize, and it is very certain, that many suits are entered, merely with a view to the chance of success, from a spirit of speculation, in cases where the parties themselves think their own claims doubtful and untenable, but are persuaded by Attornies that they may as well try their luck, sometimes perhaps with success.

191.—However with all the objections, which exist against our Courts of Justice and make them unpopular, it would be difficult now to go on without them. The system is established, and it would be very difficult to substitute another. More simple and more summa-

ry modes of trial are perhaps better suited to the character and customs of the people, but there are objections to the overthrow of a system once established, and it most probably would not be easy to suggest any other more free from objections. The preceding observations are submitted from a desire to lay the truth before His Excellency the Governor General, not from any presumptuous belief, that I could remedy the evils which I have ventured to point out.

Perjury of witnesses.

192.—No part of the evils complained of, is more dreadful than the universal perjury of witnesses, and the remedy for the mischief is not easily to be found.

193.—It might at first sight appear, that severe punishments towards those who perjure themselves would tend to diminish the crime, but it would be difficult to convict a man of perjury, where to prove it, it would be necessary to have recourse to witnesses equally unworthy of trust.

194.—It would moreover be liable to misinterpretation, under the general disposition which prevails to condemn our Courts, were witnesses to be punished for the evidence given ; as the people not yet disposed to acknowledge any excellence in our Courts, would rather attribute the punishment to a partial bias in the mind of the Court, than to a desire to promote justice ; and the penalties, meant for perjury, might be converted into the means of further deterring respectable witnesses, who already dread the Courts, from giving true evidence, by a threat from designing persons, that such evidence would not be acceptable to the Court, and would be surely punished.

195.—Under the influence of these considerations, no decided persevering attempts have been made to put a stop to perjury by systematic punishment ; though it is evident on every trial, that some of the witnesses on one side, or the other, or both, must have perjured themselves.

196.

96.—This notorious perjury is in some degree counteracted by the caution with which evidence is received, and the little weight which is now attached to it, but it is disheartening to think, that with all the desire existing on the part of Government to administer justice to its subjects, our Courts are such disreputable places, that it is disgraceful to a respectable man even to give evidence in them.

I have the honor to be

Sir,

Your obedient servant,

(Signed) C. T. METCALFE,

RESIDENT.

Dihlee, 12th December, 1815.

GOVERNOR GENERAL.

FROM the time of my departure from this Presidency, in the course of my passage through the several districts of the Lower Provinces which lay in my route, as well as during my whole tour thro' the Western Provinces; I have constantly turned my attention to the several subjects connected with the territorial revenue of this country. Your Honorable Board is aware of the instructions I issued to the several Collectors, through whose zillahs I expected to pass, directing each to meet me, as I approached the confines of his jurisdiction, and to bring a report of every thing connected with its actual state, as well as to be prepared to communicate any other information I might require.

Introduction.

Board of Commissioners.

Revenue Collectors of Cawnpore, Bundlecund, Bareillee, Shajehanpore, Seharunpore, Moradabad, Agra, Etawah, Allygurh, Goruckpore, Allahabad, Furruckabad, Benares, Burdwan and Hooghly.

Nuddea, Moorshedabad, Bhaugulpore, Behar, Tirhoot, Shahabad, Sarun.

2. The reports presented to me, in consequence of these instructions, I have now the honor to lay before your Honorable Board.

Mr. Newnham.

Collectors of Customs at Cawnpore, Agra, Moorshedabad.

Mint Master at Furruckabad.

Resident at Dehly.

3. The series for the Upper Provinces will be found to be complete, for as there were only the two districts of Bundlecund and Goruckpore, which I had not visited, I subsequently called upon the Collectors of those zillahs to transmit reports, in order that the body of information I had collected, in illustration of the system of revenue administration adopted in these Provinces, might not be defective from the want of them.

4. I have not thought it necessary to do the same in the Lower Provinces, because the information already possessed by Government respecting them is ample; neither are the circumstances of those districts, in which the settlement has been declared perpetual, such as to excite so warm an interest in their favor; nor are the observations and enquiries I was enabled to make while passing rapidly by water through them, sufficiently particular to justify my offering my sentiments respecting them with

with equal confidence. Those reports, however, which I did receive in several of the districts of the Lower Provinces, are sufficient to enable me to draw a comparison between the two divisions of our territorial possessions in this country, and to trace the points of analogy or the discriminating features of the system pursued in each, as far as may be necessary for the purposes of general illustration.

5. The whole of these reports may therefore be considered to form a body of information in the highest degree valuable, as exhibiting the views and sentiments of ministerial officers of the revenue branch of the service, besides containing many useful and important suggestions respecting the nature of the systems pursued, and their operation on the body of the people.

6. I had also the pleasure to receive from the Board of Commissioners for the Upper Provinces, a most satisfactory report, accompanied by statements of the whole revenue, of every description, derived from the Provinces under their charge, as assessed and collected in each successive year, from the time the country fell under our dominion. But this report, however valuable in itself, is the least of the obligations I am under to the Members of the Board. I have seized the opportunity of consulting them individually, as well as collectively, on every occasion when I entertained doubt, and I gratefully feel how much instruction I owe to their extensive information, their liberal and enlarged views of Policy, as well as their accurate and minute acquaintance with every branch and principle of our administration. I have indeed no hesitation to declare, that if I have been able to settle my opinions on many of the very intricate questions with which the science of revenue relative to this country is replete, it is entirely through their assistance, and in consequence of the advantage I derived from constant unreserved communication with them, that I have done so.

Advantages to Government from the administration of the Board of Commissioners.

7. The report of the Board of Commissioners exhibits the very flattering picture of an increase of 74 lacks of Rupees in the land revenue and abkaree receipts of the Ceded and Conquered Provinces, beyond the amount realized in the first year of their falling under our dominion; of this excess, no less a proportion than 55 lacks and a half, has been

added

added to the land revenue between the years 1807-8 and 1813-14, or since the appointment of the present Board of Commissioners. A decrease has also been effected in the charges of collection to the extent of 15 lacks and a half by the reduction of the tehseeldaree establishments, a measure exclusively attributable to them. The advantage therefore derived by Government from their administration of the revenues of these Provinces, is actually calculable at the amount of 71 lacks annually realized, beyond what Government could have hoped to obtain by any other means. By another mode of calculation, the net revenue of these Provinces is shewn to have received an increase since the commencement of their management to the extent of 73 lacks annually: I however beg to refer your Hon'ble Board to the report and statements themselves, which I have now the pleasure to lay before you, and have only been desirous of calling your particular attention to this important result in the first instance.

8. It appears that the present total Jumma or demand on account of the land revenue of the Ceded and Conquered Provinces, amounts to somewhat beyond two crore and eighty lacks; that this is collected at an annual charge of about 18 lacks, or a little more than 6 per cent. including the expence of the establishment of the Board; that the balance at the end of the year of collection, did not last year exceed 8 lacks, or about 3 per cent. and that the whole is realized upon 3,57,40,598 recorded begahs of land in cultivation.

View of the land revenue of the Upper Provinces.

9. The reports received from the several Collectors of the Districts in the Ceded and Conquered Provinces, afford me the means of pursuing this statistical analysis of the land revenue still more minutely; I will therefore give a comparative view of the revenue of each district, as derived from these reports, or from information I procured from the records of the Board, when any of the particulars I required were wanting in the reports.

10. It appears that the district of Cawnpore is recorded as containing 3489 villages, and 29,46,315 kutcha begahs, of which 17,68,745 are cultivated, and 10,43,381 wholly unproductive. The Government demand is Rupees 27,36,297, which was realized last year with only a balance

Cawnpore.

balance of 14,355 Rupees, little more than ½ per cent; so that in this district the assessment of Government would appear to be nearly 1 R. 8 As. per begah.

Bundlecund.

11. The district of Bundlecund is said to contain 21,18,991 kutcha begahs in cultivation, which yield a revenue of 29,01,510 being at the rate therefore of about 1 R. 6 As. per begah. There are also 8,94,387 begahs fit for cultivation. The revenue of this district is realized with a balance of less than one per cent.

Bareillee.

12. The district of Bareillee is stated to contain 44,58,380 kutcha begahs of land in cultivation, assessed with a jumma of 22,66,280 Rupees, which was realized within a sum of 27,830. This gives an average of a trifle more than 8 Annas per begah. There are in this district 33,62,022 begahs of land, fit for cultivation, but not in actual tillage, and 35,58,899 entirely waste.

Shahjehanpore.

13. The district of Shahjehanpore is stated to contain 38,56,187 kutcha begahs in cultivation, and to be assessed with a jumma of 16,24,235 Rupees, affording the average rate of something less than 7 Annas per begah. It contains further 29,07,430 begahs fit for cultivation, and 40,10,411 entirely waste. The revenue of this district was also realized last year with a balance less than 1 per cent.

Seharunpore.

14. The district of Seharunpore contains 18,79,998 begahs of land in cultivation, assessed at Rupees 25,79,817, which was realized to within the sum of 26,092 Rupees. The assessment is therefore at the rate of 1 R. 6 As. per begah. The waste lands are said to amount to 24,44,317, and those cultivable, but neglected, 21,34,705. The begah in this instance is the pucka begah, equal to three kutcha.

Moradabad.

15. The district of Moradabad is said to contain 8,263 villages, and 17,10,443 kutcha begahs in cultivation, assessed at Rupees 25,46,417, or 1 Rupee 12 Annas per begah, which was collected with a balance of only Rupees 40,564. There are 20,93,437 begahs of land fit for cultivation (in three descriptions, Chunchur 44,055; Bungur 13,17,638;

Dhaka

Dhaka and Jungul 7,31,754;) 7,27,860 entirely waste, and 11,95,641 rent free.

16. The district of Agra is said to contain 12,22,667 begahs in cultivation, assessed at 14,25,802 Rupees, or 1R. 2As. 9P. per begah:—3,30,807 begahs fit for cultivation and 9,02,740 entirely waste.—The calamities of three successive seasons had occasioned a balance in the district of 1,20,326 Rupees. Agra.

17. The district of Etawah is said to contain begahs 44,41,788 in cultivation, assessed at 30,62,068 Rupees, which was realized to within 2¼ per cent.—The average per begah would thus appear to be about 12 Annas.—The number of villages in this district is 3,813; the quantity of land fit for cultivation 5,75,564, and of waste 17,81,564. Etawah.

18. The district of Allygurh is said to contain pucka begahs 16,40,242 in cultivation, assessed at 31,49,809 Rupees, or 1R. 15As. per begah.—It is remarked however that the talooks of Dia Ram and others are not included in the above rukba—no particulars respecting them being known.—There are in the district 11,47,045 begahs fit for cultivation, and 11,88,665 waste.—The balance at the close of the year 1221 Fusslee amounted to Rupees 3,03,354. Allygurh.

19. Goruckpore is divided into two distinct portions by the Gogra, the southern Azimgurh, and the Northern Goruckpore Proper—these may be considered separately.—Azimghur appears to contain 3,50,190 begahs in cultivation, assessed at 9,54,135 Rupees, about 2Rs. 12As. per begah.—The number of begahs fit for cultivation is 2,63,003, and waste 12,91,772.—Goruckpore Proper contains 3,63,872 begahs in cultivation, assessed at 7,92,205 Rupees, or 2 R. 3As. per begah—7,68,272 begahs fit for cultivation, and waste 5,69,986.—The begah here is of course the pucka begah.—In the collections of this district a balance had accrued in the last year of upwards of two lacks, owing to the incomplete state of the new settlement. Goruckpore.

20. Allahabad was found at the last settlement to contain 16,55,106 begahs Allahabad.

begahs in cultivation, assessed at 27,93,241 Rupees, or 1 R. 11 As. per begah, which was realized to within a trifle of 3 Annas and a half per cent. —The number of begahs fit for cultivation was found to be 3,95,012, and waste 11,09,777.—The Collector of this district has stated the settlement to have been made with 1811 engaging proprietors, and 64 farmers.

Furruckabad.

21. Furruckabad contains begahs in cultivation 18,05,383, assessed at 10,28,485 Rupees, which was realized to within 3 Rs. 2 As. per Cent. the rate of assessment per begah would appear to be 9 Annas.—There are 2,97,350 begahs, fit for cultivation, and 10,46,704 waste.

22. The above is a compendious view of the state of the land revenue in the several districts of the Ceded and Conquered Provinces at the close of the Fuslee year 1221, or official year 1813-14. I have not the materials, nor indeed is it necessary to pursue the analysis thro' the several districts within the circle of the perpetual settlement.—The Collectors of Kishennagur, Behar and Sarun alone, have furnished me with the extent of Khalsa land recorded in the quinquennial Registers of their respective districts.—On comparing these with the jumma of each zillah, it would appear that the rate per beegah in Nuddea, is 6½ Annas, in Behar 5½, in Sarun 11½.

Benares.

23. With respect to Benares I have only to observe in this place, that notwithstanding the advantages which might be supposed to have attended the perpetuity of its settlement, the land revenue of that district, appears to fluctuate in its amount without improving, and was the last year near half a lack below the rate assessed originally by Mr. Duncan.—The causes of this may be stated generally to be, the necessity of occasional remission in cases of over assessment, or where land has been injured, while the corresponding increase of under rated assessments was impracticable, together with the law which requires that in cases of lapsed farms, proprietors shall be admitted at the original tushkhees jumma, by which increase even in these cases is prevented.—The assessment or demand of Government stands at present at 44,68,497 Rupees, which is not realized without a heavy arrear, approaching

to

to nearly 5 per cent. This is however always ultimately recovered just in time to stop the actual sale of the estates of the defaulters.

24. In the above view of the land revenue of the Upper Provinces, what will most probably first strike your Honorable Board, is the very great variety in the rate of assessment per begah exhibited by the records of each zillah. The rate in Shajehanpore and Bareillee is 7 and 8 Annas, while that of Moradabad (the remaining zillah of Rohilcund) for the begah of the same description is 1 R, 12 As. This very great variation is the more extraordinary, as it is not to be traced to any difference of fertility in the respective districts, nor generally to any difference in the dimensions of the begahs; besides that, there is no reason to believe that the high or low rate of assessment per begah has any operation in producing an accumulation of arrears, or promoting the facility of realization. Indeed with the exception of the districts of Goruckpore, and Agra, where the existing arrears are clearly traceable to other causes, there are grounds for the remark that the amount assessed is realized with comparative punctuality in those zillahs, in particular, where the rate of assessment would appear the highest.

Inaccuracy of the record of the extent of land deduced from the above view.

On the contrary the Bareillee portion of Rohilcund is more fertile and better watered than Moradabad, the whole centre of the latter district is comparatively unproductive land.

The fluctuation of rate per begah between individual contiguous estates is yet greater.

25. The only inference deducible from this variety of rate is, that the rukbas or statements of the kanoongoes and Putwarrees from which the record of the extent is formed, are manifestly erroneous, and that if a proprietor can venture to engage for so high a rate per begah as the records frequently exhibit, it is only from the knowledge that he has other lands unknown to the assessor, from the proceeds of which, united with those recorded, he has the means of raising the amount of jumma beyond the necessary returns of his capital and labor.

26. The assessment is fixed therefore upon his total receipts without reference to the extent of land supposed to be assessed, and considering that it is a tax on produce, and not on land, there certainly can be no reason why it should not be so. The question however with Government is, in what way the total amount of produce can best be ascertained? And I think it may be satisfactorily shewn that a know-

ledge

ledge by measurement or survey of the whole extent of land, is the only secure ground on which an estimate of the average produce can be formed, and consequently the only criterion of assessments which Government can reckon upon in general practice.

Necessity of surveys as a criterion of assessments advanced.

27. With a view to illustrate this, it will be necessary to explain shortly the nature of our settlements, and the mode of their formation.

The nature of the right of Government and the modes of its realization explained.

Vide Regulation 19, Bengal, 1795.

28. The right of Government is to a certain proportion of the produce of every cultivated begah, such has been the recognized right of the ruling power in this country from time immemorial, and it has descended to us entire and unimpaired. The mode of realizing it with most advantage is a question which has often been discussed by Government, tho' even to this day it remains undecided.

29. The modes which seemed to present themselves for its choice may be generalized into the following.

The Government might collect annually from the actual cultivators on an annual estimate of the actual produce.

Or the Government might realize its rights thro' the intervention of middle men, whom it might bind by special engagements of such a nature as might be deemed most proper and secure.

Ryotwarree settlements why impracticable.

30. The first is the system of Ukbur. It is the Ryotwarree system pursued by Colonel Munro at Madras, as lately explained and recommended to us by the Honorable the Court of Directors, and it has had its trial at this Presidency also, being from what I have been able to collect, the system pursued, in several parts of the assigned territory in the neighbourhood of Delhi, as well as in cases where land was held in khas management by the several Collectors of the Upper Provinces.

31. A system of this description, however, requires for its adequate execution, a minuteness of inspection, and of detail, superintendence by no means suited to the present scale of our European agency. The nature

nature of our establishments has required the division of the country into jurisdictions of so large an extent, and has induced so rapid a succession of officers, that it is impossible for a Collector to obtain a sufficient acquaintance either with the land, or with the cultivators, to pursue a system which brings him into dealings with a whole population.

32. A ryotwar settlement could not be made without a personal acquaintance with each individual cultivator, and at least a view estimate, or as it is technically called a nuzurandaź of the land once a year, if not at every sowing season.—Neither could it be realized without an estimate of the produce of every harvest, for the crop as it stands on the ground is the only security of Government, and it must be watched in its growth, and as it ripens, that Government may not be defrauded of its share.

33. It is obviously impossible for the Collector to do this in person, except in his own immediate neighbourhood, so that a swarm of subordinate Native agents would have to be entertained, to whom a power must be delegated, over which the Collector's general control would be quite inadequate for the prevention of abuses.

34. Experience has shown that the principles of no class of Natives, are proof against the temptations of a situation giving any concern with land or with the land revenue: Indeed, though every mode, and every scale of remuneration, have been tried, still has it been found that even tehseeldars are not to be trusted.—A system therefore, involving the necessity of maintaining so large a body of Native ministerial officers, would be oppressive to the body of the people in its execution, besides being on other grounds highly objectionable.

35. It is however unnecessary to enter further into the detail of this argument; for I think it may safely be assumed as absolutely impracticable for us to pursue any system with effect, of which the principle is, that Government should by its ministerial officers have annual dealings with each individual cultivator, and demand from each the share of the produce of his capital and labor, whether in kind or value as it stands.—It is equally impracticable for Government to bind each individual ryot by

fixed

fixed engagements for a period.—Indeed experience has shown that they would not be willing to enter into such; insomuch that even the zemindars of Bengal have failed in introducing such a system, tho' prescribed by the legislature.

Fixed settlement by engagements necessary.

36. It only remained therefore for our Government, to adopt the other alternative, and simplify as well as secure the realization of its right, by the introduction of a class of middle men, each of whom might be answerable in person and property for its realization over a certain extent.

37. But the middle men who presented themselves were also of several classes, besides that the engagements which Government might enter into with them admitted of variety in the length of period for which they might be granted.

Their several kinds.

38. Government might admit middle men of the description of temporary farmers, the class approaching nearest to its own ministerial officers; for the tehseeldars who paid by a commission of ten per cent. on the jumma, and answerable for all arrears were, as will be hereafter more fully explained, farmers in every thing, except in name.—This is the system of Kasim Ulee Khan, and though admitted to be of all the most pernicious, is still adopted in many cases where estates fall on the hands of Government, from the want of bidders at a sale, the recusance of proprietors, or any other causes.—These farms are generally for a limited period, when they are called meeadee ijarahs, but should they happen to be for the life of the farmer, or in perpetuity, they are then called istumrars and talooks.

39. Government might admit an hereditary class of middle men of the description of pergunna zemindars, as has been done in Bengal, where this class was previously in existence in many places, and where many farms also had from prescription, and the long oversight of Government, acquired the stability of this description of tenure.

40. Or Government might, with a view to preserve the rights of the

existing

existing cultivating zemindars, admit the intervention of one or more of this body as their representative or mokuddum, and suffer him to engage for the whole of a village, leaving the settlement of the shares of each individual cultivator to be adjusted in detail amongst themselves, with an appeal to the arbitration of the Civil Courts. This is the system which the present Board of Commissioners have every where sought to introduce, and their success in which is no doubt one of the greatest blessings to the body of the people attendant on their management.

Criterion by which fixed settlements should be formed illustrated by reference to what has occurred.

41. But since the agency of contracting middle men of one class or other, was assumed and found by experience to be indispensible, the question recurred, by what criterion under this system was the amount demandable from each engager, to be regulated.

42. Under the ryotwarree, which is the primitive form of settlement, the crops as they stand on the ground are valued, and the share of Government regulated accordingly. The impossibility, however, of referring to this standard in general practice, induced the introduction of the middle men, with whom an assessment is to be made by previous adjustment on the average rate of produce. The Government compounds for the share which is its rights, in a certain money payment, supposed to be fixed on equitable principles, as a fair equivalent for what it might have expected to realize from a valuation of the actual produce. The rate is of course an average, having no reference to any particular year, so that the profits of a favourable season, and the losses of a bad one, fall upon the contractor.

43. This is the spirit in which all settlements that are made by contract or engagement must necessarily be fixed. I have made particular enquiries, with the view to ascertain the mode in which the rate is usually regulated in the settlements of the Upper Provinces, and the checks which exist against imposition on the Government, or oppression on the landholder.

44. Had the introduction of the middle men immediately succeeded the practice of levying a share of the actual produce from off the ground, there can be no doubt that a recurrence to the actual receipts under the

existence

existence of that practice, would have formed the best criterion of the rate at which it would be to the advantage of Government to accept an offer.—But this has not been the case; this system was never generally adopted, and where partially introduced from necessity, was never pursued in such a manner as to inspire any confidence in the results it afforded.

45. When the country fell under our Government, we found no uniformity of system in any part of it.—Every description of middle men, and every kind of opposing interest was in existence.—We had to form our first settlements merely from the records of what had before been received, as kept by officers notoriously corrupt; neither could we, at the first, do without the agency of similar officers.

46. The same heterogeneous mass of engagers was therefore necessarily continued (indeed it still continues in a manner,) and the same tehseeldaree agency which had so long been in the practice of defrauding the former Governments, was employed as the medium of communication between Government and the engagers; with no other modification, than that instead of contracting as the former Government did with the aumils, for a certain extent of country at a certain gross sum, and leaving them to remunerate themselves in the apportionment of the Mofussil settlements; these settlements were adjusted in the first instance between Government and the engagers, and the realization of the aggregate amount was contracted for by the tehseeldar at a specific remuneration of 10 per cent.

47. This modification, and a more strict control than former Governments had been in the habit of exercising, produced a considerable excess of revenue beyond what former Governments had realized.—There is reason however to believe, that the formation of such Mofussil settlements was originally left in too many instances to the tehseeldars, and that it was not until the abolition of this contract agency, that settlements began to be made generally by the European officers of Government in person.

48. The first general attempt that was made to form a settlement by means

means of the Collectors in person, on a knowledge of the actual assets, may therefore be dated from the year 1807-8.

49. There was a difficulty however of obtaining materials to be trusted. The kanoongoe officers were accordingly restored on the part of Government, and it was expected that the information they would afford, combined with the mofussil accounts of the putwarrees, to which they formed a check, would be sufficient materials for an accurate and equitable settlement.

50. They are the only regular materials possessed at the present day: But as the putwarrees are the servants of the zemindar, and not in the interest of Government; while the old records of the kanoongoes' offices were found in a most confused and mutilated state, no confidence can be placed in the authenticity or correctness of either.

51. A Collector, however, about to assess a pergunnah, procures first from the kanoongo a general rukba of its extent, and a doul or estimate of its average produce.—He is convinced that these are not to be relied upon, indeed the materials on which they are formed are not sufficiently known to him, he accordingly looks out for such other information as may be within his reach, and as no village is without a spirit of party and opposing interests, khyrkhahie information, anonymous and otherwise, is always obtained without difficulty.—The putwarree accounts of each village are then called for from the zemindar, but as it is evidently his interest to withhold the true accounts, those produced cannot be expected to be authentic, indeed every item of information is contradictory, and nothing but the names of a number of villages are known for certain.

52. After determining with whom the Government is to engage, a question frequently of the utmost nicety, the Collector considers the former assessment of the village, compares it with all the information he has received, and having endeavoured to form an estimate of its capability, offers it to the proprietor at the rate of assessment he conceives it capable of yielding. The proprietor denies the extent of capability, when the Collector threatens measurement; the dread of an exposition of the

real

real state of which, will generally induce an acceptance of the offer, sometimes indeed the threat of seeking another, who will contract on the terms proposed, either as a farmer or from among the joint proprietors, may be superadded to the threat of measurement, and contribute with it to the acceptance of the offer: But the measurement is the most legitimate check the Collector can exercise, and so long as it is only the dread of this which operates as an inducement to accept, there can be no fear that the rate proposed is beyond the capability of the village: on the contrary, the proved efficacy of the threat affords the clearest inference that the real extent and produce of the village are still unknown, and that Government has not its full legitimate right.

Surveys shewn to be the only true criterion.

53. Should however the Collector have over-rated the capability, the proprietor is the party, who will solicit measurement; indeed this is the only criterion to which they can both resort with confidence in their dealings one with another.

54. It is to be regretted, however, that the shortness of the period for which settlements are made, and the consequent haste the Collector is in to complete them, render him averse to the adoption of a mode of assessment, attended with much trouble and delay, and prevent him from having more frequent recourse to measurements. But it must be obvious to every one, that until the Collectors may be afforded the means of recurring more frequently and readily to this criterion, by the preparation of an accurate record of the extent of every pergunnah, taken from actual measurement or survey, there can be no security that the assessment is at the rate intended, or that land is not withheld from the rent roll of Government.

Nature of survey.

55. I do not mean that a survey should take place of so minute a nature as that it should exhibit the cultivation and name of the occupant of every begah of land; for I am aware that a survey including such particulars could not be completed within a very long period.—But pergunnah surveys, exhibiting the area and general view of the cultivation, might be prepared with comparative facility; and they would be amply sufficient to check the rukbas and village accounts, by placing in the hands of the Collectors a general outline, which he possesses the means

of

of filling up after slight enquiry and inspection, when he may conceive himself imposed upon.

56. I am aware that it is maintained by many, and particularly in a report of Mr. Newnham upon the system of village accounts, to which I shall hereafter have occasion to call the attention of your Honorable Board, that those accounts would of themselves be a sufficient criterion of the capability of the land, if only proper pains were taken, to secure the production of the authentic ones.

57. Admitting what is in itself questionable, that fabricated accounts are always distinguishable from the true, a knowledge of the actual extent of each pergunnah, must still be the only means of determining with confidence, whether those accounts include every portion of land within its limits.—The accounts may be correct for each village named, as far as the lands of it may be there entered, but there may yet be much land in toufer, or excess, beyond the recorded limits, which, though equally in cultivation, remains unnoticed in the accounts.

58. That this is the case every where, appears to be the universal opinion; and the daily discovery even of whole villages unknown to the records, is the best evidence of the advantage which would attend pergunnah surveys.

59. The quantity of toufer land which might by this means be expected to be recovered to the khalsa or rent roll of government, is incalculable; let only a comparison be made of the recorded extent of every zillah, with the extent yielded by a calculation of the area from an accurate map, and the difference will be found surprising.

60. A survey of a part of Goruckpore, which has lately been made by Lieut. Blake, for military purposes, affords me the means of making such a comparison of one pergunnah, in that district.—I understand it is one of the best cultivated in the province, and that there is not a single begah in it unappropriated. The pergunnah of Nujeemabad is recorded in the offices of revenue as containing 3,12,179 begahs in all; the trigonometrical survey yields an area of 5,19,230 begahs of 1,600 square

square yards to the begah; until therefore we may have information that may be relied on, of the actual extent of every pergunnah, I cannot think (were there no other objection) we should be justified in recommending that our settlements should be fixed in perpetuity on an assumption that the grounds of them are perfect.

61. The high importance and indeed necessity of pergunnah surveys have, I understand, been frequently urged by the Board of Commissioners, and their suggestions have met the general concurrence of this Government; the measure has not, however, yet been adopted, from the want of a sufficient number of professional men. Ensign Gerard, it is true, was last year appointed to survey the district of Seharunpore; but, as he could not be spared from his military duties in consequence of his Corps being sent on actual service, even this partial commencement has not yet been carried into effect.

62. The importance of having these surveys executed, prior to taking any steps, with a view to render our present settlements perpetual, will naturally suggest itself to your Hon'ble Board. Where settlements are only for a period, the discovery of toufer land is comparatively easy, and when discovered, it is at once assessed: But the difficulty which appears to have been felt in Benares, and in Nuddea, as stated by the Collectors of these districts respectively, of discovering the toufer in the first instance, of fixing its limits afterwards, and ultimately of bringing it under assessment, should warn us of the imprudence of declaring the settlement as it stands perpetual, in the vain hope that toufer land subsequently found to exist, may with ease be added to the khalsa hereafter.—Indeed, if further arguments in support of this position were necessary, they might be found in the obstacles which have been experienced with regard to the attempted resumption and assessment of the lands lately brought into cultivation in the Sunderbunds, tho' notoriously toufer, and in the feeling of fruitless regret, with which we discover the actual extent of estates in every district of the Lower Provinces, compared with the records of the quinquennial register, whenever a division happens to impose the necessity of a measurement.

63. My opinion that it would be injudicious to declare any settlement perpetual, for the correctness of which we may not have the security of such surveys, has been strengthened greatly by the enquiries I have made respecting the settlements which it was before proposed to declare perpetual in these provinces.

Expediency of surveys further deduced from the consequences of disallowing the perpetual settlement.

64. The settlement of Bareilly, made subsequently to that proposed to be rendered permanent, has yielded an increase of 6 lacks of Rupees; in Moradabad an increase of 4 lacks is confidently anticipated by the collector.—It is to be remarked, indeed, that of these districts upwards of half were in farm at the time, and consequently would have been open to re-settlement at the expiration of the leases, altho' the settlements with proprietors had been declared perpetual.—In Etawah also, where an increase of about three lacks has been effected, it has been occasioned chiefly by the subdivision of several large talooks, the holders of which could only have been considered as proprietors entitled to a permanent jumma under the system of Bengal.—In all these districts, however, there is no doubt that each re-settlement has afforded the means of detecting errors, and of equalizing and giving system to the assessments, without incurring loss, altho' no great addition may have been obtained.

65. In Cawnpore a decrease of about 20,000 Rupees was experienced, but this decrease would have been much greater, from remissions and irrecoverable balances, had the permanency been allowed, for in this district especially, much fouler land was recovered to Government on the occasion of re-settlement, and the further discovery of it is daily taking place.—In Goruckpore also, a decrease is anticipated; yet the disallowance of the permanency will have obviated in this district a still greater decrease, if the re-settlement had been confined to those lands only, the proprietors of which might not have chosen to continue at the present jumma.—In Allahabad and Furruckabad, a clear increase has been obtained, which would have been lost, had the former settlement continued.

Goruckpore Proper cannot be ready for permanency in less than half a century.

66. Throughout the several districts of the Conquered Provinces also, though the re-settlement has not yet been commenced, an increase appears

pears to be anticipated, except in Agra and Allighur, where peculiar circumstances exist to interrupt the expectation.

Increase of revenue not solely attributable to improvement of land.

67. I cannot find, that the increase realized or expected is altogether attributable to the progression of improvement; but, on the contrary, I rather am inclined to think, it has arisen chiefly from the circumstance that the former settlement was made with an imperfect knowledge of the assets, and from the increased experience of a lengthened administration, which must have contributed to the discovery of many of its defects, and have afforded the ability of removing them.

68. The presumed inaccuracy of all the rukbas from which the records of the extent of land in cultivation are drawn up, leaves me without the means of declaring with any confidence, to what extent cultivation has extended since that period. The general opinion certainly is, that it has extended greatly, and what I have witnessed leads me to think the belief well founded.—The Collector of Bundlecund indeed reports the extent of land in cultivation at the present time, to exceed in a ratio considerably beyond one-third, the extent in cultivation in the year 1807-8, but he acknowledges he has no reason to believe the statements of either period accurate, and the excess arises possibly as much from toufer land since discovered and annexed, as from waste since calculated.

69. Improvement however, if it has been progressive, will still continue to be so, nor is it at all dependent on the permanency of our settlements. On the contrary, a system of periodical assessment, administered with cautious moderation, and with the constant object of equalizing its operation, and relieving partial hardship, must offer encouragements to improvement equal to those of perpetuity. It is not from the anxiety, however equitable, of participating in the profits of this improvement, so much as from the desire of recovering what Government may be supposed to be defrauded of by present concealment, that I advance the opinion of its being injudicious to make our present settlements fixed, and unalterable for ever, without some further security for their correctness.

Rusudee Jumma discussed.

70. I had entertained the idea that cultivation must have been advancing in the Upper Provinces with a rapidity of progression, which it might be

be to our advantage to meet, by concluding settlements with a rusudee jumma, increasing proportionally each year of the term. The inquiries however I have been able to make, have satisfied me of the delusive nature of such a measure, and of the inexpediency of a general resort to it. If an estate already entirely in cultivation, be assessed in the first year at the full rate of its produce, no increase of industry would be secure of adding to that produce; so that it is to be feared the progressive rusud, instead of acting as a stimulus to further exertion, would afford the disheartening prospect of an assessment, the cultivator knows not how to provide for. Heavy arrears, the ruin of the proprietor, and perhaps his absconding, would be the inevitable consequence.

71. Judging indeed from an account of the several settlements of this kind, I obtained from the Board of Commissioners, it appeared, that such had been the practical result of the measure, wherever the rusud had been added beyond the full rate of assessment, the land could afford in the first instance; wherever on the contrary, the rusud assumed the shape of a remission or forbearance in the first year of settlement, below what could be considered as the ordinary produce of the land (a mode of encouragement frequently adopted, in order to assist proprietors in recovering from the effects of temporary calamity, or in cases of land recently and imperfectly cultivated,) the measure was attended with every advantage, and the annual excess appeared to have been punctually realized.—I am fully convinced, that it is only in these cases that it would be expedient to deviate from the established mode (of forming the assessment on the existing amount of produce at a fixed and even rate each year,) and that it would be attended with the worst consequences to calculate as an available asset, or source of revenue, the profits of an improvement, speculative and remote.

72. With respect to the periods, for which the settlements of the Upper Provinces have usually been concluded, I must confess I do not believe them of sufficient duration to give fair play to the system pursued.—In this also am I supported by the general opinion of the revenue authorities, whom I have consulted, so that I have the less hesitation in recording my sentiments on the subject.

Periods of settlement discussed.

73.

73. Three, four, or even five years, may rather be considered as the period which it is necessary to employ in the formation of a settlement, than as affording the means of judging from its operation, whether it be a good one.—Indeed, under the practice of adopting such periods, I am confident it must frequently have happened, that the rate of assessment of a village has been fixed for the term of one settlement only at the very eve of its expiration; so that instead of having any prospective operation, it has been, in cases of increase, an exaction of past profits presumed to have been withheld, and for which there is no security that they have not been long since otherwise appropriated: the settlement therefore will have ceased to be a contract, or engagement, and have become a demand for an old debt, then only known to have been contracted.

This was the case in Moradabad and other districts.

74. The superior advantages, however, of lengthened periods on general principles, need no exposition from me.—Your Hon'ble Board is already fully aware of them, and I have only alluded to the subject in order to suggest for your consideration, whether it would not be adviseable that application should be made to the Hon'ble the Court of Directors, for leave to extend the period of five years, fixed by the Hon'ble Court, for the ensuing settlement, to the longer term of nine years.—Three years of this period have indeed already expired in the Ceded Provinces, and in many districts the settlements are still only in formation.

75. I am satisfied also that advantage could be derived from reckoning the period prospectively from the year of the actual settlement of each pergunnah or village, and that it is perfectly useless to introduce a fiction, and suppose the new assessment to have had operation every where from a given date, merely because from that day it began to be adjusted somewhere.

76. It is desirable that a Collector should be frequently employed in the business of settlement; for nothing is more calculated to enlarge his views, and extend his general information, than this particular branch of his duty: but when the settlement of a whole zillah is at once thrown upon his hands, in a manner requiring speedy accomplishment, the sense that the utmost individual exertion on his part would scarcely be adequate

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to effect it as he would wish, must necessarily operate in inducing, if not personal remission, at least an extended employment. and reliance on Native ministerial agency.—Were the settlements to be made by pergunnahs, according as the period of each should successively expire, the Collector would have the advantage of the means of a personal superintendence of them all, and as there would be no such hurry for their completion, they would no doubt be made on better information, and after more particular enquiry.

Effects of our revenue system on the body of the people.

77. I have hitherto considered the revenue system adopted, and the mode of its administration, in the several lights in which the Government were most concerned: I have sought to define the way in which the rents might be realized with most effect, and settled with most advantage. There is, however, another point of view, in which the system requires to be contemplated, and that is in its operation on the body of the people.

78. I have before described generally, the class of people with whom the settlement in these provinces has usually been concluded. The Board of Commissioners have sought to uphold the village zemindars, and in the Upper Provinces as well as in Behar and Benares, no doubt can be entertained, that these have the only hereditary pretension and are the only persons fundamentally connected with the soil.

The insecurity of landed tenures discussed.

79. A notion has, I believe, been entertained by many, the representation of which may perhaps have reached even your Honorable Board, that the system of our revenue administration in the Upper Provinces, has induced all the evils of insecurity to landed property, so that in its operation, numbers have been ousted from their rights, and left to want and misery.

80. I have been careful to make very particular enquiries into this subject, and I am happy to be able to assure your Honorable Board, that any opinions of this nature which have circulated, owe their origin to the want of sufficient information, and to an inaccuracy of deduction from appearances.—Our system has certainly some very serious defects, but these lie as much in the judicial, as in the revenue branch of its administration,

nistration, and except the partial operation of sales of land for arrears of revenue and of private purchases by the Native officers of Government, I cannot believe that any revolution in the property of the soil has at all been one of its effects.

81. Your Honorable Board is well acquainted with the theory of the property and economy of villages in the possession of the indigenous proprietors, or cultivating zemindars. The rights of all are well ascertained and defined, and though the divisions and subdivisions appear intricate to a distant observer, they are productive of no confusion amongst themselves, it being only when disturbed by the operation of external causes that the general harmony suffers interruption.

82. This system of village property, was yet in being in the Upper Provinces, when they fell under our dominion; for, the farmers and officers of former Governments, though arbitrary and unmerciful in their exactions, seldom had the hardihood to attempt to interfere with this state of real property. The village community was thus complete; and though there was usually one amongst the sharers whose name was entered in the public accounts, as the person who collected and paid the revenue, he was merely a malgoozar, in the same manner as a farmer or officer of Government, and the circumstance of his name being so entered was never held to convey any special privileges or exclusive rights.

83. Our settlements have been (when made with proprietors) of the mouzawarree kind, in which engagements are entered into for entire villages: In the first instance, the selection of the different parties who might offer themselves as the proprietors of villages, for the purpose of engaging with Government, would rest with the Collector. There was in fact no other authority at that time in the newly Ceded Provinces, and the selection, in the first instance, was clearly a fiscal operation, subject to be disputed by any person who might conceive himself aggrieved by it, in the Dewannee Adawluts, on their subsequent introduction.

84. I have already observed, that there is reason to believe the executive duty of the settlement was frequently left to the tehseeldars, whence it may be apprehended that in the selection founded on their reports,

ports, a preference has been sometimes given to parties possessing no title to admission; such indeed is known to have been the case in some pergunnahs of Cawnpore, and I am told that instances of glaring injustice of this sort, grounded even on the falsification of public records, have come before the Board of Commissioners. But the Board have even in these cases preferred leaving the aggrieved parties to seek redress by regular application to the Adawlut, rather than run the risk of disturbing the stability and security of landed property, by an attempt to render justice in an extra judicial manner.

85. The same discretion of original selection, which I have stated to have necessarily existed in the revenue authorities at the first settlement, was similarly exercised by them at the second, third and fourth settlements, in the admission of claimants to the proprietary right of such villages as had been let in farm at the first settlement, in consequence of no proprietor being at the moment forthcoming.—Many of these villages, indeed, would, under the provisions of the regulations, remain in farm until the expiration of the third settlement, in consequence of the proprietor's claim not being preferred within a prescribed period. —All persons thinking themselves aggrieved by such selection, when ultimately made, were at full liberty to advance in the Adawlut their superior title.

86. Many suits have accordingly been instituted in the Adawluts, and some persons have been admitted under judicial decrees, reversing the exclusion originally awarded against them by the revenue authorities.—That many suits have not been brought, may be ascribed partly to the difficulty of proving long dormant claims, partly to the expense and delays of litigation in our Courts, and partly to a hope founded on the shortness of the settlements, that the exclusion might last no longer than the present lease.—The undeviating principle adopted by the Board of Commissioners, of not disputing or questioning rights once recognized on whatever grounds, ought however, to have long since removed this hope; and altho' under the influence of the two other causes, this principle may operate in fact as a denial of justice; in some individual instances, it is obvious that it tends materially to the solidity of landed property.

87.

87. But altho' the Board in the express view of avoiding the very consequence which has been since laid to their charge, that of weakening the security of tenures in land, have cautiously refrained from all interference in rights recognized by whatever authority previously to their administration; they have with a most scrupulous attention revised the proceedings of the subordinate revenue authorities on claims to the proprietary right of lands remaining in farm, which may subsequently have been preferred, and the selection has in such cases undergone the strictest revision and the most deliberate scrutiny.

88. Where no doubt or dispute existed in regard to the right of property, a modification of the right was apparently introduced in some instances, by the measure adopted for the settlement of puttudaree estates.—The Collector, for the greater security and facility in collecting the public dues, would be solicitous to have engagements from one person for each entire village or estate, instead of looking to ten, twenty or a hundred engagers.—This measure is in fact grounded on the Regulations, which direct the election of single managers for all joint undivided estates, and make the entire estates liable for the default of such manager.—The same measure was found to have prevailed during the former governments, as is manifest from the old wasulbakees of the canoongoes, which exhibit, in no instance, even of estates the most extensively sub-divided in puttudaree tenure, more than one name of cabooleutdar. The consequences of this measure, in the instance of sales of land, are what I before alluded to.

89. The same description of property exists equally in Benares: and the same mode of management, namely, that of taking engagements from one general representative having been adopted in that district, corresponding consequences have occurred there also to a still greater extent. The nature of these tenures was so well known to Mr. Duncan, that in the code of regulations formed by him for that province, in 1795, an express stipulation was made that, in the event of recourse being had to a sale of land, (no such recourse having till that time ever been had) the purchaser should be understood to have acquired no more than the specific right of the person for whose default the sale should be made.

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What was contemplated by Mr. Duncan as a remote and barely possible contingency, soon became general; sales of land, on the application of the contract tehseeldars, were daily made with indiscriminate precipitancy. The tehseeldars themselves became the purchasers, and under the construction of another clause in the regulation, which declares all joint undivided estates liable for the whole of the assessment, the purchasers were admitted to have acquired not only the specific share of the defaulting manager, and the right of succeeding to him as a representative of the partnership, but the entire fee simple of the estate to the total extinction of all puttadaree right.

90. That such a result should have been the necessary, or even the natural consequence of the system, does not appear, when it is found that during 8 years of Mr. Duncan's own superintendence of the contract tehseeldars, not one sale of land had ever taken place.

91. Having mentioned that some estates were let in farm at the first settlement, in consequence of no proprietors being forthcoming, I should observe that such estates were not untenanted or deserted, nor was it supposed they were destitute of proprietors. In the frequent recourse which the aumils of the former governments are known to have had to adventitious farmers, with the view of obtaining the greatest possible rent, and the precarious and inadequate subsistence which the zemindars thus derived from their lands, many of them had emigrated to distant parts of the country in search of service, principally in the armies of Hindoostan, and their existence could not be immediately traced.

92. This result of the numerous exclusions given to the zemindars of Benares by Rajah Bulwan Sing, and his successor, Rajah Chete Sing, must be familiar to your Honorable Board, through the daily resettlements of farmed lands, which are submitted for the sanction of Government; and those instances will also exemplify the difficulty of tracing satisfactorily claims to the proprietary right after any length of dispossession, as well as justify the discretion above alluded to, which is exercised by Government, on the recommendation of the revenue authorities, of selecting one party from contending claimants, and of leaving the rest to a prosecution of their claims in the Adawlut.

93. It appears also that many estates were let in farm at the first settlement on this plan, although the proprietors were not only forthcoming, and in the actual possession of their lands, but also anxious to engage for them.

94. When the agency of the tehseeldars was resorted to in the executive detail of the settlement, many unfounded pleas of this sort were brought forward by them, as a cloak for the farms which they had given to their own servants, and connections of the lands of these supposed absentees; many estates were similarly let in farm by them on the equally unfounded allegation, that the proprietors, altho' present, had declined to engage: and one of the first measures of the Board of Commissioners, for the benefit of the land-holders, was to procure the enactment of a regulation for the removal of the doubts relative to their admission to the third settlement, arising from the misconception under which the second settlement had in several districts been renewed indiscriminately with the same parties, as well as at the same jumma as the first.

95. Some estates also were let in farm, not because the proprietors were not forthcoming, or not willing to engage, but because they could not readily agree among themselves in the choice of a representative, or a manager for the whole partnership.—In these cases, as the Collector, during the hurry of a general settlement had neither leisure to investigate the allotment of each puttadar's proportion of the aggregate assessment, nor sufficient information in regard to the nature of their tenures, the readiest mode which suggested itself for the security of the public revenue, in preference to holding the lands khas, which is a measure always attended with loss to Government, was to lease the whole village to a farmer, who should be responsible for the whole jumma, and who was left to make his own arrangements with the occupants.

96. When the nature of these partnership tenures came to be more clearly understood, a regulation was passed for the better management of them, combining the support of private rights with the security of the dues of Government; and altho' it is not to be understood that even

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under the former system of taking engagements from one of the number for the entire village, any authority was intended to be vested in, or was actually assumed by the engager, incompatible with the rights of the general brotherhood, this provident check under the watchful administration of the Board of Commissioners, has contributed essentially to give greater independence and security to this valuable class of our subjects; the importance of which will be appreciated by your Hon'ble Board, when it is recollected that our native soldiery is principally recruited from the numerous ramifications of the hereditary stock of village zemindars.

97. As these remarks do not exactly apply to the province of Rohilcund, and as the Bareilly portion of it has been quoted for the chief proof of the supposed insecurity of landed rights, it will be proper to observe, that under two successive revolutions, in the first of which the old Hindoo proprietors had been superseded by the Afghan invaders, and in the second of which these Afghans had in their turn been ousted by the Lucknow administration, the province on our acquisition of it was found almost wholly in the hands of large farming contractors.—The enlightened views of Mr. Deane, whose example was with the same liberal policy followed by Mr. Leycester (the two gentlemen originally selected at the cession as the Collectors of Bareilly and Moradabad) led them to undertake the tracing proprietary rights, and the unravelling of this confused state of things.—The last settlement of Bareilly concluded under Mr. Deane's own personal inspection, has brought into direct engagements with Government upwards of 2,000 village zemindars.—In Moradabad also, where two thirds of the lands were in farm at the first settlement, the proportion is already reduced to less than one third.

98. From the above view of the principles by which the Board of Commissioners have hitherto regulated their conduct, and of the state of things they found in actual existence at the time they first took charge of their duties in the Western Provinces, your Hon'ble Board must be sensible that, whatever may be the nature of the insecurity to landed property, alleged to have resulted from our system, no share of such an effect is any way attributable to their administration of it. But as those who allege the

the existence of this insecurity, have used the broad appellation of landed property, without stating precisely the kind of property in land, or the class of proprietors to which they intend to apply the term, it will be necessary to say a few words on this point.

99. If by it was meant, that under the system we have pursued, hereditary rights were in the first instance not sought out and maintained with sufficiently scrupulous attention, but that men were frequently acknowledged as actual proprietors, who had either no interest, or but a very partial one in the land, the fee simple of which was thus assigned to them; or if it be asserted that actual proprietors were often injured by the needless farming of their lands to strangers; such a degree of insecurity to the rights of individuals must certainly be admitted to have existed on our first occupation of the country, before the appointment of the Board of Commissioners took place. In the confusion of such a juncture, it would be difficult to say how it could have been otherwise, but this has before been traced to the necessity we found ourselves under, of keeping up for a time the system of contract tehseeldaree, with which, tho' we could and did modify or regulate it, so as to make it less injurious than before, we could not at once altogether dispense.

100. We have seen, however, that it was the first act of the Board of Commissioners, when they were subsequently appointed to procure a legislative enactment, providing a remedy for the most crying part of the abuses, which arose from a misinterpretation of this system, and that it was their second act to strike at the root of the evil, by entirely abolishing the objectionable part of that system. Claims to proprietary right are no longer decided on the reports of tehseeldars, neither is it on their recommendation that recurrence is had to the farming of any estate. Both these points are now universally investigated by the Collectors in person, and their report is again subject to the most scrupulous enquiry and reconsideration by the Board of Commissioners.

101. I have taken especial care to ascertain the mode in which all cases of this nature are scrutinized by each authority, and I feel satisfied

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it would be impossible in any way to secure a more fair or full enquiry than what they now actually receive on all occasions. Though therefore in the first instance, under the contract tehseeldaree system, there does not appear to have existed any adequate security to landed property against the abuses of that system; it must be obvious that the present administration of the Board of Commissioners not only is no way chargeable with these abuses, but has the high merit of having remedied them. As it is, the spirit infused into the several Collectors by the active control, and superintendence of the Commissioners, which first enabled us to dispense with the mischievous features of the system, and as its entire abolition finally was a measure of their own, it is to the Commissioners evidently that the Country is indebted for the securities these interests have since procured.

102. But neither is the antecedent administration of the system of our Government chargeable with the neglect of these interests, which is stated to have been at first experienced: the Government promised to the Country a more just and liberal system than had hitherto been pursued; but this was only to be effected by the gradual improvement of that which they found in being. Perfection is not the work of a moment, before our occupation of the Country, the aumils and tehseeldars contracted with the governments, and the whole internal settlement was entirely left with them.—They farmed or admitted proprietors to engage at pleasure, and there was no consistency of system, either between each aumil and his successor, or between the aumil and the person to whom he under-farmed a portion of his jurisdiction. On the other hand, from the first of our occupation, the mofussil settlement was made with Government, and though perhaps, considering the unpropitious circumstances and want of information under which it was made, the whole proprietary class could not be at once recovered and secured in all their rights; still, as far as they were ascertained, security was afforded, and the class was guarded from any further encroachment on the part of those, to whom they owed the confusion and difficulties under which they laboured at the time.—The gradual improvement of our system has procured their gradual further restoration and additional security.—That it should entirely have redressed the wrongs infected by antecedent system, is more than could have been rationally expected.

103.

103. It is not therefore either to the system of the Board of Commissioners, or even to that pursued by Government, before their appointment to the Upper Provinces, but to the vices of administration anterior to our possession of the Provinces, that any apparent disregard of landed rights must be attributed.—In truth, our enquiry after such rights was necessarily partial or tardy, because we could only gradually discover the extent to which they had been subverted.

104. That the Board did wisely in only seeking to supplant the farmers, and in leaving to the judicial authorities exclusively the power of restoring to the actual owner, rights before awarded to others in full property, without sufficient cause, is a point on which I should conceive no doubt can be entertained.—Had a different conduct been pursued, though only in the most flagrant cases, it must have left the impression that even acknowledgment of landed right by Government, afforded no security, and that should a different Board at any time be constituted, the whole of the acts and measures of the present would be equally open to revision and annulment.

105. The alleged insecurity may, however, have reference to other features of our system; perhaps the holders of large talooks and estates are meant, and certainly it must be admitted to have been an object of our system to keep down this class.—These were not, however, proprietors of the soil, as I have before explained, and never had been so considered in the Western Provinces.—They had only a more permanent sort of lease or contract than a common farmer, and whatever rights or privileges such tenure could legitimately be held to convey, our Government did not attempt to supersede.—But our Government exerted its undoubted right of fixing its assessment on such tenures by a mofussil ascertainment of their produce.—Its ministerial officers made themselves acquainted with the payments of all the village proprietors, and offered to confirm the tenure to the holder, assessed at the rate thus yielded, with such deduction as the nature of the tenure entitled him to.—With this, however, he was seldom satisfied: he claimed the rate assessed by former governments, a rate standing on no permanent basis, and which fraud, intrigue, or fear, had enabled him to extort for the moment from their weakness.

106.

106. The forfeiture of the tenure will therefore generally have been occasioned by his recusance, and cannot be attributed to any insecurity resulting from the system.—In such cases the Mofussil village settlements were made direct with the village zemindars, in the same manner as elsewhere, and the holder of the tenure was left to the receipt of such allowance for his maintenance, as on just computation he might have heretofore been entitled to enjoy. That the full rate of assessment imposed, or even an excess beyond it, has almost always ultimately been realized from large estates so taken from the holders, affords the most satisfactory proof that such insecurity, if such was meant, is not a defect of system.

107. The alleged insecurity may, however, apply to the village putteedar proprietors, who, until the passing of the regulation for the admission of them all to engage, were, by the letter of the law, almost left at the mercy of the single engager to the Government. It was certainly a great oversight in the legislature of this country, not to have earlier discovered the necessity of providing for the security of this class; yet as long as the engager was himself one of the class, I have seen no reason to believe that he assumed the powers of sole proprietor, or that the general putteedaree property was at all infringed upon. There was indeed always between the engager, and the other sharers, a community of principle, and of caste, which secured them from any attempt at usurpation on his part, when there may not have existed any interruption of this community from external causes.—But whenever a stranger to these interests may have acquired any right to interfere, whether a surety by intrigue had obtained a mortgage of the estate, or it had been purchased by public or private sale, then certainly will the putteedaree right of the other shares have been in danger of being sacrificed to his avarice.

Sales of land considered.

108. If therefore our system does exhibit any defects of a nature injurious to the existing state of property, it is in the regarding mokuddamee right, constituted as above explained, to be a saleable and heritable property, but more especially in the exposure of it to public sale, by auction, in the view of recovering arrears by the price for which it might sell. It is from this process, that the community and general economy of the village

village is violated, and the institutions of the country outraged. The auction purchasers are generally the vakeels, the omlah, and dependents of the courts and other kutcherries, who have acquired their notions of property from the regulations, or from the Bengal practice, and who proceed to take possession of their purchase, with the conception that no one has any right but themselves.

109. The expediency of sales for the recovery of arrears of revenue, admits in itself of doubt. The object of them is, to recover an arrear which cannot be realized by other means, and to secure a more punctual liquidation of the public dues in future; but numerous instances have occurred, particularly in Goruckpore and Benares, where the sale has produced on the contrary a further accumulation of annual balances, on the part of the purchaser, who pleads his not being able to obtain complete possession; besides that, the low price at which land generally sells, occasions frequently a disappointment in the primary object of the measure.

110. The advantage is therefore at all events precarious, but such as it is, it is purchased at the expence of the rights of a whole co-partnership, which it virtually annihilates, and at the expence of the peace and well-being of the district, which it invariably disturbs. An endless litigation in the Courts of Judicature, between the Government, the purchaser, and the former engager, and proprietors, is an evil which always attends it, and frequently it gives rise to a systematic defiance of all legal authority, disgraceful to Government, and to the administration of Civil Justice.

111. I have been happy to find, that the Board of Commissioners have been able to realize the land revenue of the Upper Provinces with extraordinary punctuality, with but rare resort to this unpopular and injurious measure; but it is with much regret I have learnt, that through the intrigues of the tehseeldars, at a period anterior to their administration, large portions of the three districts of Goruckpore, Cawnpore, and Allahabad, had been transferred from the hands of the original proprietors, by public sale for arrears of rent; and that particularly in the former district, very valuable villages had been frequently sold, at a price of from two to five Rupees.—The purchasers, were generally the tehseeldars themselves, and even to the present day, the

the local authorities lament the consequences of the oppression which ensued, nor have their united efforts yet been able to arrest the course of its injurious effects.

112. The Board of Commissioners are, I believe, fully aware, that the system of auction sale for arrears, is but ill adapted to the state of property in the provinces under their charge.—It is therefore unnecessary to impress upon their minds, that the measure should be resorted to with caution; but perhaps they might be consulted with effect on the practicability of entirely doing without it, and of striking off so harsh a feature from the code of our revenue administration.

113. If the engaging proprietor be considered as the chosen representative of the community of the village, it will naturally suggest itself to your Hon'ble Board, that the wishes of that community should be consulted prior to the transfer of the tenure to another.—Before, however, proposing any specific enactment on this subject, I am naturally desirous that the Board of Commissioners should be called upon to give their opinion on the state of village property in general, and its accordance or otherwise with the several parts of our system, especially how it is affected by the practice of auction sales, and to suggest the nature of the rules they may conceive best calculated to preserve it inviolate, without risking the just rights of Government.

Putwarries recommended to be made servants of Government.

114. To ascertain the several rights of the proprietors must obviously be the first step, and the most likely method that occurs to me of effecting this, is to re-establish the office of putwarree on a footing independant of the engaging zemindar, the person interested in infringing on them.—The community may thus be induced to regard him as the record-keeper, and guardian of their rights, and a reference to his accounts as a satisfactory criterion, by which to decide their mutual differences.

115. Upon this subject, however, I beg leave to lay before your Hon'ble Board, the accompanying able and interesting report from Mr. Newnham, dated the 1st of May; submitting a translate of a set of putwarree accounts, which came into his hands while he officiated as

Collector

Collector of Cawnpore.—He has furnished an explanation of the use, and object of every separate part of this system of Book-keeping, as well as of the mutual connection of the whole.—He details the several important interests both of Government, and of the tenantry at large, which such a system of accounts is calculated to secure, and recommends, with a view of ensuring their accuracy and authenticity, that the putwarree of every village should be made the servant of Government, instead of the nomination being left as at present to the zemindar.

116. This measure was, I believe, proposed so far back as, by Sir John Shore, at the time of forming the perpetual settlement, as well as by several authorities since, and it appears to have already been adopted by the Presidency of Bombay, in a legislative enactment, a copy of which Mr. Newnham has procured from his brother, the Secretary to Government at that Presidency, and has annexed to his report.

117. The points directly connected with the putwarree accounts, are chiefly the adjustment of the revenue of Government, the appointment of it in shares of estates, and the ascertainment of the rent payable by each under-proprietor, and of the actual payments of each, in cases of a contested demand on the part of the engaging zemindar.—In all these points (Mr. Newnham observes,) the interests of the zemindar are only as 1 to 8 or 10 in comparison with those of Government, or of the under-proprietors. The zemindar is at the same time the only party who can have an object in falsifying the accounts, while the power of nominating and dismissing the village accountant, unquestionably *furnishes him with the means.*

118. During the former governments, the putwarree was considered to be a public officer, and in many parts of the country was appointed by the canoongo. There appears indeed to be a necessary dependence of these too officers on each other, in as much as the general record of the district accountant can be no more than the aggregate of the details derived from the several village accountants.

119. In constituting the putwarree an officer of Government, it appears unnecessary to prescribe to him any particular form of accounts.

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The system detailed by Mr. Newnham is clear and comprehensive, and seems to contain every requisite check, for ensuring accuracy. But any other mode of accounts, which may already be in use, might be equally advantageous, although not so complete and scientific. The Bengal system of putwarree accounts, a translate of which is already in print, differs materially,—and the practice of Behar, of Benares, of Rohilcund, and the Upper Dooab, and of the west bank of the Jumna, may differ, not only from that of Cawnpore, but from each other. It seems immaterial in what shape the accounts are kept, if the fidelity of them can be secured; and this object is more likely to be effected, by abolishing the dependance of the putwarree upon the zemindar, than by any penalties, or punishments.

Mr. Gladwin's work.

120. Mr. Newnham infers from the inherent checks which the system of accounts detailed by him possesses on its own accuracy, that falsification is impracticable, or would be readily detected, and that the attempt to falsify them in such a manner as to escape detection, by making the whole series of false accounts to accord with one another, would exceed the patience and skill of the most industrious and acute Hindoo.—It is not easy to define the extent of labour of which a native is capable, when a profit is in view; but as all fabrications of accounts are made on the spur of the moment, when the accounts are called for, such attempts might be more effectually obviated, even in the present constitution of the putwarree office, if the accounts, instead of being called for only when wanted, were to be deposited annually; that is to say, copies of them, in the hands of the canoongoes.

121. A difficulty occurs in regard to constituting the putwarree a public servant, that when he ceases to be a servant of the zemindar, he will cease to be the depository of the latter's accounts.—It is well known that even at present, the putwarree is not always entrusted with the details of the land held by the zemindar in nezjote, or by his menials in chakeran; and if the zemindar should choose to employ an accountant of his own for the rest of the villages also, the putwarree will be left to form his accounts on the information of the under-proprietors only, or like the canoongoes, on such information as he can pick up.

122. It may be recollected that the canoongoe office was intended to be a register of leases, by making it the canoongoe's duty to record all pottahs and cabooleuts; but as no obligation was enforced on the zemindars to register these documents, the object of the regulation has never been effected.—It will deserve consideration, whether this should not be obviated by a legislative enactment, the purview of which might extend to the securing all necessary information for the putwarree also.

123. The pay of the putwarree must be provided for by law; Government cannot be expected to defray the charge of such a numerous establishment.—The putwarree is usually paid by a cess or russoom of half an Anna per cent. on the jumma contributed by the under-proprietors, who may be expected to pay it still more chearfully hereafter, when their own interests are more clearly connected with the existence of the office than at present.—I propose therefore that the Board of Commissioners, or Mr. Newnham in person, whose report evinces the extent of his information on the subject, be directed to prepare the draft of a regulation, making the putwarree independent of the zemindar, and embracing all those several points.

Claim of recusing zemindars to malikanah, considered.

124. A question connected with the nature of the landed property of the Upper Provinces was brought to my notice in the course of my tour, and I believe it has also been laid before your Hon'ble Board. I allude to the claim of recusing zemindars to a malikanah allowance, for their maintenance.—The subject is one of the utmost importance, and I have accordingly been careful to make the fullest enquiries in every quarter, with a view to satisfy my mind respecting it.

125. The claim of recusing zemindars is founded on a legislative provision, and an assurance by proclamation, that a zemindar declining to engage for his estate, shall be allowed the same nankar as he may have been authorized to receive on recusance from the former government—provided the rate of such allowance does not exceed the amount of 10 per cent. on the jumma.—The obvious import of this stipulation, and of the rules connected with it, for the formation of the settlement, is, that such zemindars as under the former government were accustomed to receive a personal allowance of nankar, should be continued in the

possession of that nankar, whether they choose to engage or not in the first alternative, by a deduction of the nankar in their jumma, and in the latter case by a money payment from the treasury; but in the progress of the discussion of this subject, by substituting the word malikana, or haki melkeeut, as a convertible term for nankar, and applying the rules contained in the provisions for the settlement of the Lower Provinces to a part of our territories altogether distinct,—an idea has been promulgated, and anxiously caught at by our new class of landholders, the auction purchasers, that every proprietor who may think proper to decline the management of his lands, and the responsibility for the dues of Government, is entitled to receive from the treasury of Government a perpetual annuity of ten per cent. on the jumma.

126. The only nankar of a description similar to the malikana of Bengal, of which the proceedings of Government furnish any knowledge, is the special provision or reservation to the large talookdars and rajahs, for the support of themselves and their families, independently of their engagements with Government; and this was oftener an assignment of rent-free land than a fixed money reduction from the jumma.—The evident object of the rule was, to continue the same provision which they had hitherto enjoyed, to this class of middle men, whom it was in the contemplation and the wish of Government to exclude or dispense with, by the invitation held out to the village zemindars, (who had heretofore paid their rents thro' the medium of these persons) to engage direct with Government.

127. It is evidently therefore, only this class that can claim under the above rule—neither was the spirit of the rule intended to have application to any other, and this class have invariably received their established malikana, whether of money or land, from the first of our acquisition of these Provinces, when thus divested of the management of the revenue.

128. I am further informed that the nankar of the village zemindars is also a matter of record, and that the wassil bakees of the canoongoes are generally (in some districts invariably) found to exhibit,

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not a malikana payable to them in the event of their exclusion, for no such allowance was known to the Vizier's administration in the case of the village zemindars; but the nankar, allowed as a deduction from the jumma of the village to the engagers, whether proprietors or farmers, and therefore technically known by the name of nankar moojrayee wassil bakee.

129. Whether this specific allowance, or any other should be now extended to the recusing village zemindars, and to their successors, the auction purchasers, is a point which requires deliberate consideration.—The inexpediency of thus holding out a premium to them for discharging themselves and their lands from all responsibility for the revenue of Government, must be evident.—Could we imagine such a resignation of the land-holders to become general, the consequence would be a charge on the public treasury of a perpetual annuity of near 80 lack of Rupees, and the total loss of the collateral security which Government now holds on the lands themselves.—The very amount of such a possible burthen seems to decide the question, and to expose the fallacy that lurks in the pretension.—The nankar was clearly personal, and allowed from considerations applying to the individual, not to his function of village zemindar—of course, it could not be transferable.

130. If indeed the want of some provision to excluded zemindars should have been productive, as has been surmised, of outrages against the peace of society, policy will require that a remedy should be sought for so serious an evil.—It may be questioned however whether, the evils of this nature alleged to have arisen from the exclusion, and the consequent ruin of proprietors, may not be traced to cases of exclusion from other causes than recusance.—The sales of land which violate the rights of whole communities, are much more productive of the ruin of the landed interest, and contribute much more to drive the class of proprietors to acts of desperation, than any operation which a voluntary recusance can be supposed to have, wherein a single individual only retires from the management to the right he may have before possessed, while a farmer or officer of Government quietly assumes it in his stead.—But at any rate, consequences of this nature cannot have occurred in regard to the auction purchasers, whose subsistence has not depended on the profits of their landed concerns.

131. With respect to the original village zemindars, a further question arises from the nature of the putteedaree tenures, to what parties the nankar should be paid, and in what proportions.—As the person who may have hitherto engaged singly, can be looked upon in no other light than as managing representative of the partnership, and is perhaps the actual owner of a very small portion of the estate, he has clearly as little title individually to the entire allowance of malikanah from the estate, if let in farm, as he would have had on his exclusion from the management, by the introduction of another manager in his stead.

132. With respect also to the auction purchasers, it seems a legitimate construction, (and I believe the opinion is maintained by good authority,) that they obtain the estates they purchase with all their liabilities as well as the privileges they confer; so that if any one has bought the tenure of an engaging proprietor, in which there are other sharers, he has only bought the privilege of making his own arrangements with those sharers, and of engaging for them with the Government, the same rights that the sharers held against the old engager; they should thus in equity possess against the auction purchaser of those rights, and if the right of malikana on refusing, was not before the exclusive privilege of the single engager with the Government, the auction purchaser has evidently no ground on which to claim it. In the same manner, if at the ensuing settlement, the person who has so obtained the land, will not agree to the Collector's rate of assessment, and the other sharers should come forward and accept it, the auction purchaser, tho' he loses the advantage of being malgoozar, could not complain, for this was one of the liabilities of the tenure he purchased.

133. From this circumstance, however, if from nothing else, the extreme inaptitude of auction sales to such a state of property, while our assessments are only periodical, must be evident; the Collector does not know what he sells, nor the purchaser what he buys; the very next settlement that takes place may entirely annihilate the property put up to sale, and the purchaser is without redress, nor has he any secure equivalent for his purchase money.

134. The above view is, as your Hon'ble Board will observe, founded

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on the supposition that in an auction sale it is the tenure of the defaulter only, which is sold, and this is rather supported by the spirit of the provisions introduced by Mr. Duncan, into the Revenue Code of Benares, as above alluded to. It may, however, be urged on the other hand, that as it is the land which is made responsible for the dues of Government by the process of sale, it must be the land itself which is sold, without reference to the tenures of those upon it; so that a new property is created by the process, but, however complete this may be held to be the class of proprietors by auction purchases can evidently have little claim to a malikana, in such case, under the provisions of the existing regulations, as they cannot be of the class which used to receive such allowance from the former Governments. These persons have indeed been induced to purchase in the idea that they were purchasing something, and it may perhaps be incumbent on the Government to see that what they purchase shall not be a nonentity. The question, however, of the relative rights of the auction purchasers and putteedar proprietors of the estate which may be sold, is at present involved in much uncertainty: but Government is no way answerable for the motives which induce the purchasers, and knows nothing of the views with which he buys, or of the information on the strength of which he expects to remunerate himself; indeed Government has itself often discovered to its cost, that tenures it has exposed for sale have been no just objects for which pecuniary considerations should be demanded, their liabilities having been found to exceed their privileges and profits. The auction purchaser may perhaps be deemed to have voluntarily taken on himself the risk of this; at all events, under the above view, the act of purchase cannot give him rights beyond those attached to the particular tenure which he buys, so that he can never have a title to infer, as involved in his bargain, privileges which were not possessed by his predecessor as directly appendant to the tenure; whether therefore it is the actual tenure that is purchased, or a new tenure be held to be created by the sale, the generality of purchasers can have little title to the malikana under the existing rules, any more than the village zemindars they have supplanted.

135. In either case it would be gratuitous, and certainly I cannot discover sufficient grounds for making generally to the auction purchasers in particular, the gift of any annuity, such as that to which they pretend

tend. This contingent boon undoubtedly did not influence the award of their bidding at the sale. The inadequate price at which land is usually found to sell throughout the Upper Provinces, and the frequency with which estates are left on the hands of Government for want of any bidders, afford the best evidence that the ulterior benefit in question is not anticipated from a purchase. A clear annuity of 10 per cent. on the amount of jumma, if put up to sale, would at any rate fetch a considerable price when it was to be secured by a mere recusance. Under no view, indeed, should I conceive the auction purchaser to be entitled to the allowance of malikana, unless in an instance where the right to it should have been previously recognised as inherent in that individual tenure, which he bought, or where an engagement for its eventual payment was implied by the magnitude of the price paid.

136. The rules for the award of this allowance, are, as they stand at present, evidently indistinct; nor could a judicial decision well be grounded on them. Indeed they were passed only as a temporary measure, in so much that it is stated in the legislative provisions themselves "for the present." I beg therefore to suggest to your Honorable Board, the propriety of revising those rules, and rendering the enactments on the subject more pointed.

137. What I have stated above, accords, I believe, with the opinion entertained by the Board of Commissioners on the subject. I understand that, tho' to other classes they have generally refused the allowance, they have usually granted it to the rajahs and large proprietors, as in the cases of the rajah of Khyreegurh, in Allahabad, Sheorajpoor and Buddick, and to a number in Goruckpore.

Condition of ryots in jagheery and large estates.

138. Among the questions connected with the operation of our system of revenue on the body of the people, there is a point which has so strongly and so frequently been forced upon me, that I cannot refrain from laying my sentiments upon the subject before your Honorable Board: the situation of the village proprietors, in large estates, in farms, and jageers, is such as to call loudly for the support of some legislative provision. This is a question which has not merely reference to the Upper Provinces; for within the circle of the perpetual settlement,

ment, the situation of this unfortunate class is yet more desperate, and tho' their cries for redress may have been stifled in many districts, by their perceiving that uniform indisposition to attempt relieving them, which results from the difficulty of the operation, their sufferings have not on that account been the less acute.

139. In Burdwan, in Behar, in Benares, in Cawnpore, and indeed wherever there may have existed extensive landed property at the mercy of individuals, whether in farm, in jagheer, in talook, or in zemindaree of the higher class, the complaints of the village zemindars have crowded in upon me without number, and I had only the mortification of finding that the existing system established by the legislature left me without the means of pointing out to the complainants, any mode in which they might hope to obtain redress.

140. Of these complaints I beg leave to lay before your Honorable Board, the accompanying in original, received at Patna from a mokhtar on the part of the village proprietors of Tuladah, together with the abridged translation of it, which I caused to be prepared. I beg to assure your Honorable Board, however, that the oppressions alleged against the Rajah of Benares and Sheoo Neragur, against the jagheerdar Norunder Gur Ghosain, and other large holders, were not less flagrant or apparently less substantiated than those alleged in this petition against Baker Allee Khan, the holder of the life ijara of Tuladah. In all these tenures from what I could observe, the class of village proprietors appeared to be in a train of annihilation, and unless a remedy is speedily applied, the class will become extinct. Indeed, I fear that any remedy which could be proposed, would even now come too late to be of any effect in the several estates of Bengal; for the licence of twenty years which has been left to the zemindars of that province, will have given them the power, and they have never wanted the inclination to extinguish the rights of this class, so that no remnants of them will soon be discoverable.

141. The cause of this is to be traced to the incorrectness of the principle assumed at the time of the perpetual settlement, when those with whom Government entered into engagements, were declared the

sole

sole proprietors of the soil. The under-proprietors were considered to have no rights, except such as might be conferred by putta, and there was no security for their obtaining these on reasonable terms, except an obviously empty injunction on the zemindar, amicably to adjust and consolidate the amount of his claims.

142. It was well known (and even if it were questionable, the practice of the provinces which have more lately fallen under our dominion would set the doubt at rest,) that the cultivating zemindars were, by a custom more ancient than all law, entitled to a certain share of the produce of their lands, and that the rest, whether collected by pergunnah zemindars, or by the officers of Government, was collected as the huk of the sircar.

143. This indefeasible right of the cultivating proprietors to a fixed share of the produce, was annihilated by our directing that puttahs should be executed for a money payment, in which all the claims of the zemindars should be consolidated. The under-proprietor was thus left to the mercy of the zemindar, to whose demands there were no prescribed limits. The zemindar offered a puttah on his own terms. If the under-proprietor refused it, he was ejected, and the Courts supported the ejectment. If the under-proprietor conceived that he could contest at law the procedure, a regular suit under all the disadvantages to which he is known to be exposed, was his only resource: but when after years of anxiety and of expense, the case was at last brought to a hearing, he lost his action, because it was proved that the puttah was offered and refused, and there was no criterion to which he could refer as a means of proving that the rate was exorbitant.

Vide report of the acting judge of Burdwan.

144. The framers of the perpetual settlement declared their incompetency to fix any criterion for the adjustment of these disputes. The declaration stands recorded in our legislative code, and to the present day this omission has not been supplied. The consequence of the omission in the first instance, was a perpetual litigation between the zemindars and the under-proprietors, the former offering puttahs on their own terms, the latter not having forgotten that they possessed rights independent of all puttahs, and refusing demands they conceived unconscionable. When at last the revenue of Government was affected by the confusion

Vide Sec. LIV. Regulation VIII. 1793.

confusion which ensued, without enquiring into the root of the evil, the legislature contented itself with arming those who were under engagements to the Government with additional powers, so as to enable them to realize their demands in the first instance, whether right or wrong,—a procedure which unavoidably led to extensive and grievous oppression.

145. On the large estates I believe it will be found, that the system of puttah and kubooleut has not yet been fully established between the zemindars and the cultivating proprietors: the zemindar takes engagements from the farmers, and officers he employs to collect his rents; and in the event of their failure, makes the lands and the crops answerable for the amount. The zemindar feels none of the evils of insecurity, for, as far as the whole produce of the soil will go, he is armed by the 7th Regulation of 1799, with the power of enforcing his demand, and considering the constitution of our Civil Courts, it seems unanimously agreed, that the ryot or under-proprietor, unless he be a puttadar, is debarred any adequate means of redress for the most manifest extortions.

146. It has been urged, however, that though the rights of the former cultivating proprietors have been suffered by the Regulations to pass away sub-silentio, still, as the zemindar and his tenants have reciprocal wants, their mutual necessities must drive them to an amicable adjustment.

147. The reciprocity is not, however, so clear. The zemindar certainly cannot do without tenants, but he wants them upon his own terms, and he knows that if he can get rid of the hereditary proprietors, who claim a right to terms independent of what he may vouchsafe to give, he will obtain the means of substituting men of his own; and such is the redundancy of the cultivating class, that there will never be a difficulty of procuring ryots, ready to engage on terms only just sufficient to secure bare maintenance to the engager.

148. If it were the intention of our regulations, to deprive every class, but the large proprietors who engaged with Government, of any share in the profits of the land, that effect has been fully accomplished in Bengal. No compensation can now be made, for the injustice done

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to those who used to enjoy a share of these profits under the law of the empire, and under institutions anterior to all record for the transfer of their property to the Rajahs.

149. In Behar, however, and in Benares, the stand which was made by the Mofussil zemindars has been rather more successful, and the class has not yet been entirely proscribed and hunted down.—But unless some effectual measures are taken, with a view to stop the evil, the petition I have now the honor to lay before your Honorable Board, is sufficient to shew that such will be the ultimate consequence of our system even in those provinces.—There is no doubt that the exactions noticed in this petition are much exaggerated, the degree in which they have been practised in this particular instance, is a point which I shall endeavour, in conjunction with your Honorable Board, to ascertain accurately with a view to afford ultimate redress; but that oppression of this nature is the result of the system to which it is here attributed; that of farming and under farming in the manner alleged, is a point on which all the authorities I have consulted are entirely agreed.—It is necessary therefore, that some measures should be taken in order to protect the Mofussil zemindars from the consequences of such a system, however it may have been imposed on them.

150. It was recommended to me by the Board of Commissioners, with whom I specially consulted on this point, to consider of the re-establishment of the Mal-Adawlut under the Collector, for the trial of all cases that might occur between the zemindar and his tenants.—I do not yet feel competent to offer a decisive opinion with respect to such a measure, but there can be no doubt it would be of the highest advantage to the ryots, that they too should possess the means of a speedy recurrence to justice, without the embarrassment, delay, and expence of litigation, in the sole mode offered to them by the present constitution of our Courts. Mal-Adawlut.

151. There is a point, however, connected with the petition of the Zemindars of Tuladah (and which applies yet more strongly to the cases of the Rajah of Benares and jageerdhars in general,) to which I am desirous of calling the attention of your Honorable Board. The tenure of Baker Ulee Khan was, as I understand,

a mokurruree istumraree, or life ijara: that is, a considerable portion of land was set apart with a definite assessed jumma, on which he was not to innovate; but he undertook the collection and responsibility, on the consideration of a fixed deduction from the rate assessed. He stood therefore in the place of Government as manager. In jagheers, and in the case of the Rajah of Benares, the whole revenues of certain districts are assigned for the maintenance of the assignee.—In both the istumraree tenures and jagheers however, all that Government could make over, were the rights possessed by itself; so that it was incumbent upon the assignees to be guided in their conduct towards the subjects of Government transferred to them, by the same rules and principles of action as regulated the proceedings of Government.

152. In practice, however, it is to be feared that the assignment on the part of Government is considered to confer a proprietary right, with all the powers and privileges attached to such a right by the Regulations. Thus as but one proprietor of the soil is recognized, the rights of all those with whom Government had till then engaged, are totally annihilated by the assignment; what was heretofore paid as Revenue, must now be paid as rent; those who before held their lands with only the condition of a certain fixed payment to the Government, became tenants, subject to arbitrary exactions, and liable to ejectment if they resist the demands.

153. In the Benares jagheers, in consequence of the operation of this construction of our system, the Mofussil proprietors are supposed already to be nearly extinct. In the case of the pergunnah of Belaspoor Secundra, assigned in jagheer to Nurindar Gur Goosain, a petition regarding which (presented to me at Cawnpore) is also submitted herewith to the Board, the hardship on the land-holders as explained to me, is, if possible, still more glaring.

154. The British Government on its assumption of these Provinces, secured to the zemindars a settlement on prescribed terms, renewable for two periods of three years, for a third of four, and at the expiration of these ten years, in perpetuity. Previous to the commencement of the second triennial period, the grant of the jagheer took place, and the zemindars

mindars have in consequence been excluded from the benefits of the legislative enactments and assurances by proclamation, thro' which Government had limited its own demand. The jagheerdar has been left at liberty to make his settlements with such persons, on such terms, and for such periods, as he might choose. The consequence has been that he has adopted the system of farming it to strangers, and numbers of the ejected proprietors crowded in to me with complaints, which I could only virtually reject, by referring them to the Dewanny Adawlut of Cawnpore, where the usual period of decision is not less than three years.

155. Your Honorable Board will be sensible, that both istumrarees and jagheers, are assignments of land in lieu of a certain sum, or with a fixed amount of surplus, and that if the assignee fails to observe towards the village proprietors such conduct as may secure the faith and honor of Government from reproach ; it is incumbent on the Government to take its subjects again under its own protection, and to offer to the jagheerdar or istumraree farmer, such allowance in money for his maintenance as the assignment might have been made in lieu of, or as might have been left to the farmer in surplus

156. I recommend therefore that it be explained to the jagheerdars, and to all other assignees who stand in the place of Government, that the terms on which they hold the assessment, are, that they fulfil any engagements to which the Government may have been actually pledged, and that in their conduct to the proprietors of the lands assigned, they observe those principles of action which they may see the Government observe to other proprietors, its subjects.—This notification may either be made by legislative enactment, or by general proclamation, defining the penalty which will attach to a non-observance of it, and I leave it for our future determination to fix the mode in which this can be most advantageously effected.—I should imagine there can be no doubt of the right of Government to bind jagheerdars by legislative enactments, and to prescribe rules for their conduct equally with other classes of its subjects.

157. I have now explained to your Hon'ble Board with as much perspicuity as the extensive and complicated nature of the subjects embraced

Advantages to the country which have resulted from our revenue administration.

braced in such a discussion would allow; the sentiments which I have formed after personal enquiry, and long reflection, on the nature of the system of land revenue, administered in the Western Provinces by the present Board of Commissioners. I have endeavoured also to shew its operation on the body of the people in those prominent features, which forced themselves most particularly upon my observation.—The view I have taken will, I trust, be considered fair and impartial; for tho' I have endeavoured to vindicate the system from any ill effects or prejudicial consequences, with which I did not conceive it fairly chargeable, I have felt no disposition to refrain from the full exposition of defects which I felt ought to be acknowledged.—Indeed, I have sought to convey to you every impression as it was formed in my own mind, without palliating or concealing any circumstance.

158. The advantages of our system over those of former Governments, have not yet formed a part of the discussion;—they may be summed up in a few words.—The former systems left entirely at the discretion of the aumils, the lives and properties of all the population of their several jurisdictions. There was only an appeal to the immediate sovereign of the state, and he was generally inaccessible.

159. From the moment of the establishment of our Government, the lives of all were secured under the shield of the law; and the substitution of the practice of contracting only for the realization of a fixed assessment, instead of contracting for the revenue of a given district to be raised at the discretion and the cost of the contractor, secured their properties also, except against minor abuse and covert villainy.—The annihilation of the contract system in all its branches, has now in some degree given protection even against those evils.

160. Instead of the population being subjected to the arbitrary exactions of every aumil and of every farmer, who might choose to impose on them, an uniform and universal system has been introduced, under which every one may know his rights and be secure of having them respected.—The system is certainly not yet sufficiently perfect for its ministerial officers to know of themselves the exact amount of revenue which is demandable from all; but that is only because they cannot ascertain the actual amount

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of produce,—the requisite information being suppressed from interested motives;—all that is wanting, however, to give perfection on this point, is a fixed criterion from which the amount of produce may be known, or fairly estimated; so that settlements may be formed on uniform principles and data known to be correct, instead of only believed to be so, as at present.—I have before shewn that pergunnah surveys afford the only means of doing this effectually. But as it is obviously only the Government that suffers from the want of uniformity on this account, the advantage to the country is not less than if it were complete.

161. The advantage to the country is, however, best judged of by its effects. There is at present little or no emigration of the agricultural class—Indeed, it is found that proprietors, before driven into exile, or into the search of other means of livelihood, such as Military service, daily return to reclaim the lands they had been obliged to abandon, in the certainty, that they must now have ceased to be unprofitable.

162. The wages of agricultural labour are much higher than they used to be, which is solely attributable to the encreased demand for labour of this description. The more valuable articles of produce are also cultivated with much more spirit, and the most astonishing efforts are daily made to conquer natural defects of soil, as well as to preclude the evils of casual calamity of season.

163. There can be no doubt indeed, that the produce and the profits of agriculture have been encreased in a very surprizing degree, since the country fell under our administration. The comparative prosperity of the several cities may form a good criterion of this, and the rapidity with which they are increasing, both in size and population, is scarcely credible.

164. The abolition of those arbitrary sayer imposts, which each zemindar conceived himself entitled to levy on all goods that entered his domain, has now left open to every proprietor, a free market for all his produce, to which it may be carried without the fear of violence, or exaction in the transport.

165.

165. The beneficial system on which the customs and town-duties are now collected, has at the same time, left the rates of that market free from the operation of any local circumstances, and solely regulated by the broad commercial interests of the whole of India. In consequence of these facilities, commercial capital and enterprize, have been turned towards the land, and an activity has been infused, of which every class begins to feel the benefits.

166. The display of wealth is no longer avoided as dangerous, but perhaps the most direct and positive advantage to the landed interest, which has resulted from our occupation of the country, is the discontinuance of the arbitrary practice of quartering troops in districts, from which they were to be provided gratis, in addition to the public dues of Government, as well as the requisition of free gifts of several descriptions, besides the obligation gratuitously to furnish supplies, labourers, artificers, and carriage of every sort, whenever circumstances might bring a man in power, or a body of troops to the neighbourhood of a village. The occasions for demands of this description were unlimited, and payment never was offered, nor could it have been asked with safety.

167. Under our system, these are of course not known, although, when we obtained the country, long usage had almost given to them the sanction of legality, and the exactions might have been continued either as they were, or modified into a more regular impost, without the fear of odium, or opposition.

168. The above advantages are amongst those which have particularly attended our revenue administration, and are in addition to those incalculable benefits, resulting from the comparative total absence of external or internal violence, induced by the strength of our political Government, and the authority of the law.

Modes of encreasing the revenue introduced.

169. I have done now with the discussion of the mode of administration and effects of our system of land revenue—there are no other subjects connected with these points to which I am anxious at present to call the attention of your Hon'ble Board, but it has been with me an object

ject of constant solicitude, to seek the means of oncreasing the revenue we derive from land, without adding to the burthens of present proprietors.

170. The discovery of land in excess, beyond what appears on the records of Government, may be considered as a legitimate source of increase; and as the assessment of such excess would be merely an equalization of the rate of the estate in which it is found, with that of other estates in which such excess may not exist, the measure has none of the features of an additional impost. It is the correction of an illicit concealment I have before shewn, the grounds on which I conceived a survey by pergunnahs, would afford the means of frequent discoveries of this nature; but there are other sources of increase to which I am more desirous of calling your attention, as the prospect of availing ourselves of them is more immediate and certain.

Discontinuance of requisition of malzamin proposed.

171. The demand from engaging proprietors of malzamincc, or security for the payment of the jumma of Government, is, I conceive, a tax upon the land revenue, which both the nature and the value of the landed property, would enable us to dispense with. No one will be security without his equivalent, and whatever may be the rate of this equivalent, it will be considered in the terms offered to Government, and deducted from the amount engaged for. From all the enquiries I have been enabled to make, I cannot find that any additional security has resulted to Government, or that the revenue has been at all more punctually paid, in consequence of the practice of requiring security. On the contrary, I am inclined to think, that it has in many cases been productive of confusion, from which the Government revenue will always ultimately suffer.

172. The malzamin, when not a fellow proprietor, in which case, both the engager and his surety maintain themselves, or fall together, will be an intriguing bunya, who receives 5 per cent. as a consideration, and accepts the responsibility, merely in the hope that arrears may induce further application to him, so as to strengthen the interest he has acquired in the land; indeed it will generally happen, that in a short time

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he will have insinuated himself into the right of the proprietor, whence all the evils will result, usually attendant on an auction sale; for the bunya will have acquired the property by intrigue, and will have the same notions respecting it, as if it had been so purchased.

173. The land, I should now conceive, will be sufficient security for itself, and even tho' one village proprietor may fail in his engagements, some other settlement may generally be made with the rest, by which the Government will be secured from loss. On this subject, I propose, that a reference be made to the Board of Commissioners; and that they be requested, in the event of their concurring in the above sentiments, to prepare a regulation, or take such other means as they may conceive necessary, to discontinue the practice of requiring security for the jumma of Government in the manner hitherto pursued.

Nuzurana on rent free lands proposed.

174. There is another source of increased revenue, which promises to be yet more productive. The Collector of Moradabad submitted for my consideration, the propriety of levying an annual nuzurana on all rent free lands, and he supported the proposition by alleging it to be the practice of the Country that such should be exacted; stating, that many of the lakherazdars of Bareilly and Moradabad, paid to the present day a quit rent of this description, imposed by former Governments. In Bundlecund a similar impost is said to exist, and is known by the name of russoom tihace, which affords ground to believe it was originally a third of the profits.

175. Of all subjects of taxation, I should conceive the profits of rent free lands the most legitimate. The holders of land of this description are at present exempted from all contributions, whether to the local police, or Government, by which they are protected, or to the public works from which their estate derive equal benefit with the rest of the community. They are indebted for the exemption, either to the superstition, to the false charity, or to the ill-directed favor of the heads of former governments, and other men in power, and have little personal claim upon ourselves for a perpetual exemption from the obligations they owe as subjects. Most of the tenures may be considered invalid—Indeed, the scruples which have saved the whole of these lands from indiscriminate

minate resumption, have given cause to admire as much the simplicity as the extreme good faith of all our actions and proceedings.

176. The mode of drawing a revenue from this source, and the degree in which this may be practicable without a breach of our existing pledges should be taken into our early and deliberate consideration : either the practice of requiring an annual share of contribution as nuzuruna, or that of demanding a peshkush of a year's profit, on the occasion of every transfer or succession, would be agreeable to former usage, and to the established institutions of the country. It might be required also as an equivalent for an immunity from further inquisition on the part of Government.

177. From a statement furnished by the Board of Commissioners, it appears, that in the Ceded and Conquered Provinces alone, the extent of land held under rent free grants, amounts to 44,95,177 beegahs, an extent exceeding the recorded area of the cultivated land in the largest of our zillahs. From this circumstance your Hon'ble Board will see the extent of imposition which is practised on the Government, (for the authenticity or validity of almost all these grants is highly questionable,) and the productive nature of the source of increase which is pointed out.

178. In the several districts of the Lower Provinces the extent of land furtively alienated from the rent roll of Government, is also reported to be numerous, and the rules introduced into the Code of 1793, with a view to provide for an investigation of the validity of the claims by which it was held, and for its eventual resumption in case they should be found defective, appear to have slept as a dead-letter, or at least never to have been acted on conscientiously; on this point I beg to suggest that a reference be made to the Board of Revenue, and that they be called upon to submit a particular report of the recorded extent of rent free land in the province under their administration, the proportion which has been resumed under the existing rules, and the causes to which the unsatisfactory result of those rules is to be attributed.

179. Alluvial lands, and those which have lately been brought into cultivation in the Sunderbunds, have, I believe, already presented themselves

selves to your Hon'ble Board, as legitimate sources of increase to the territorial revenue; measures have, I presume, been taken, with a view to secure to Government their undoubted right from lands of this description: In the Western Provinces, however, where Government have not yet resigned their right to participate in the profits of improved or extended cultivation, a much more just and advantageous source of increase presents itself, in those works which give fertility to tracts now desolate, and render more productive, soils from which a scanty produce is now drawn with difficulty.

Dooab Canal.

180. On this subject I am desirous of again bringing under the consideration of your Honorable Board, the question of re-opening the Dooab Canal, which was first agitated and brought to the notice of Government, in a letter from the Board of Commissioners of the 7th of October 1809.

181 Their recommendation, that the Canal should be restored at the expense of Government, is supported by so animated and just a picture of the benefits to the country, with which it would be attended, that I cannot refrain from the citation of their sentiments.

"The Canal in question generally known by the name of Zabitta "Khan's, from an attempt which he made to re-establish it, but "which is said to have failed, from the interruption given to the work by "the Sikhs; runs thro' the whole Western half of the Upper Dooab, "from the foot of the hills to opposite Delhi, and previous to its being "suffered to fall into decay, must have fertilized in its windings an ex-"tent of country of not much less than 200 miles."

"The proofs of the former fertility of this tract of country may be "still traced in its present state of impoverishment; extensive groves "of mango trees are evidence of former populousness and prosperity, and "even where no vestige of human industry remains, the names of the vil-"lages which once stood there, are still preserved in the public accounts."

"During our residence in the District of Saharunpoor, while the se-"cond Commissioner lent his assistance to the formation of the settle-

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" ment for the pergunnahs resumed from Rajahs Ramdyal and Nyne " Sing, our senior Commissioner visited the head of the Canal as laid " down in the accompanying sketch, with which we have been favored " by the Chief Engineer, and as far as he may be permitted to form a " judgment upon a subject of which he can have no professional know- " ledge, he concurs entirely with the Chief Engineer's opinion of the " practicability of again opening it at no great expense."

" On the important advantages which may be expected to result from " the measure, if feasible, there can be no difference of opinion, several " pergunnahs now almost entirely desolate, will be rapidly restored to " cultivation, and plenty will be soon diffused over a part of the country " where wild animals now usurp the dominion over mankind."

" What expense it may require to repair the Canal in its whole course, " can only be ascertained by a regular survey. From the state in which " those few parts of it which fell under our notice were found to be, the " simple introduction of the water from the Jumna, by a restoration of the " former dam, seems sufficient for the re-establishment of the Canal. But " should the labor of excavation be found ultimately necessary to a " greater extent than we are at present led to imagine, the charge of the " undertaking, however great, would be amply repaid by the benefits re- " sulting from its success. Perhaps too the expense might be redu- " ced, by a requisition on the landholders to contribute the labor of their " tenants."

182. It appears that in consequence of this recommendation, a survey was ordered, which was executed by Captain Tod of the 25th N. I. The survey report was accompanied by a rough estimate of the probable expense at which the Canal might be opened, and which was stated roundly at the sum of a lack and a half, or two lack of Rupees. Deterred perhaps by the prospect of so large an expenditure, the Government appears to have taken no further steps, with a view to forward the undertaking. From every information, however, which I have been able to procure, I think there is good reason to conceive that the expense has been very considerably over-rated. Several intelligent persons whom I have consulted, have given it as their opinion, that the expense would fall within

Captain Wilson, Civil Architect of Patna, mentioned 20,000 as the probable expense.

within the half of the amount af Captain Tod's rough estimate; indeed, it may almost be presumed that Captain Tod must have reckoned upon a much deeper excavation, than the object of the Canal would appear to require; for being merely intended for irrigation, its surface should be as little sunk from the level of the plain as possible.

183. On these grounds, and from a conviction of the inestimable benefits which would result from the execution of this work, I recommend that some further steps be taken, with a view to ascertain with greater precision, the expense at which the Dooab Canal might be restored.

Delhi Canal.

184. To the Canal on the opposite side of the Jumna, generally known by the name of the Delhi or Ali Murdan's Canal, it is unnecessary for me to call your attention,—measures were I believe taken, and were already in a train of execution, with a view to ascertain the expense and practicability of re-opening it, and tho' these measures were interrupted for a time only by the Military operations incident to the Goorkha war, which required the services of Lieut. Blane in the field, I presume your Honorable Board will be disposed to resume them, now that these more important calls for the services of Engineer Officers have ceased.

185. I will only say that my own inspection has fully convinced me of the facility and the policy of immediately restoring this noble work, setting aside the consideration of its certain effect in bringing into cultivation vast tracts of country, now deserted, and thereby augmenting importantly the landed revenue of the Honorable Company—the dues to be collected for the distribution of the water from it, would make a most lucrative return. This is held so sure, that individuals (for propositions were made to me) would now undertake the business, were it fitting that the credit of a work so dignified, so popular, and so beneficial, should fall to the share of any but the Government—were a lack of Rupees to be laid out yearly for three years on this object; and, I believe I specify much more than would be actually required for perfecting the Canal, it would be money laid out more profitably for the Company than it could be in any other mode of application.

186.

186. Next to the revenue derived from land, the most important articles of our territorial receipts, are the customs and town duties. These for the last year 1813-14, amounted, in the provinces subject to the administration of the Board of Commissioners, to the aggregate sum of Rs. 34,27,488 5 1;—2,43,179 Rs. of which were produced by the town duties. The charges of collection appear to be about three lacks and a half, or somewhat more than 10 per cent. The amount however actually paid into the treasuries of Government, for the year 1813-14 was a trifle more than thirty lacks. I understand, indeed, that a deficiency has been experienced in the year 1814-15 amounting in the aggregate to near three lacks of Rupees, but this is attributed to mere temporary causes, in so much that the anticipation of even a further increase beyond the receipts of 1813-14 may be entertained with confidence, when the present unfavorable circumstances may cease to operate. Customs.

187. Your Honorable Board is aware of the change of system introduced in the year 1810-11 into the administration of this branch of our revenue; your Honorable Board is aware also of the advantages which have attended the measure, both to the interest of Government, and to the general commerce of the country. The enquiries I have made in this respect have confirmed me in the favorable sentiments I had before conceived respecting it, and I am happy to be able to congratulate your Honorable Board, on an increase in the receipts of the year 1813-14, beyond the average of the three years 1809-10, 1810-11, 1811-12, in the sum of nearly ten lacks of Rupees.

188. The reports of the Officers in charge of the customs at the three stations in the Upper Provinces of Cawnpore, Meeruth and Agra, I have the honor to lay before your Hon'ble Board; the latter will be found to contain much useful information respecting the trade in land salt, one of the staple articles of import into these provinces. I have also the honor to lay before you a report received from the custom master of Moorshedabad, exhibiting a very flattering statement of the collections at that station. It appears that the exertions of this officer have procured an increase in the collections, on account of customs, for the seven months between November 1813 and June 1814, amounting to

1,35,479

1,35,479 Rupees, and in the town duties an increase of 13,502 Rupees, beyond what had been collected in the same period the preceding year.

189. On the subject of this branch of territorial revenue, I have no particular observations or propositions to offer. It has, however, been suggested to me, that a custom office might be established with advantage at Monghyr, a station equi-distant from Patna and Moorshedabad, between which two cities there is at present no check upon contraband trade; on the propriety of this measure a reference to the Board of Revenue might be advisable.

Town duties.

190. It has also been suggested to me, that the town duties might be very considerably increased, by extending them to all other cities in which an European officer may reside, and by a renewal of the old kyalee or wuzun kushee duties, a source of revenue apparently abandoned (at least in the Upper Provinces) rather prematurely: upon this subject, however, a reference to the authorities in England would perhaps be requisite, under the legislative provisions of the new charter.

Abkaree and Stamps.

191. The revenue derived by Government from abkaree licences for the sale of spirituous liquors, may be stated generally to amount in the Western Provinces, including Benares, to the annual sum of ten lacks of Rupees: this is realized at an expence of about 80,000 Rupees, or at 8 per cent. No considerable increase has been obtained in this branch of revenue, since the commencement of the administration of the Board of Commissioners, nor in the Upper Provinces is any increase generally anticipated, from the new system of administration lately introduced.

Note. This does not include the commission of the Collector.

192. In the Lower Provinces, however, the anticipation appears to be very generally entertained; indeed the reports I received in the Lower Provinces seemed to exhibit a more flattering picture of the state of this branch of our revenue, than can be gathered from the generality of the reports of the more western districts; perhaps this may have its origin, in the greater vigilance and more strict attention, which the Collectors of the former have it in their power to bestow to this particular duty, since the perpetual settlement has relieved them from so large a portion

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of those other duties which fall so heavy on the Collectors of the western districts.

193. The modified rules for the conduct of the business of this branch of revenue, and also those respecting stamps, have had operation for so limited a period, that I have not the means at the present moment, of offering with confidence any opinion on their efficacy or otherwise.—I cannot, however, omit noticing a remark of the Collector of Furruckabad, on the subject of the stamp duties, which, as it was the object of the legislature in these modified enactments to extend their operation, may perhaps be deserving of some consideration; the duty on transactions of a commercial nature is said to be so high, that the commercial class have found it more to their interest to evade it.—The modes they may find of doing this are immaterial, but it must obviously be to the interest of Government to destroy the feeling, and as it is sought to give to stamps a new and more extended circulation, the doing this in the first instance, by lowering the rate instead of by additional inflictions of a penal nature, would perhaps be preferable. Stamps.

194. Upon the miscellaneous subjects noticed in the several reports, I shall not trouble your Honorable Board with any detailed observations; the only one which appears to require any particular attention, is the necessity of some more adequate provision for the supply of troops in their march. The Collector of Kishennuggur complains of the general indisposition of the zemindars of his district, to afford their aid, and of the want of any means of coercion in the event of inattention to his orders; some of the Collectors for the Upper Provinces have also brought the subject to my notice, and have offered their opinions on the fittest mode of remedying the evil. Provision of supplies to Troops.

195. The Board of Commissioners, I understand, formerly submitted to Government the draft of a Regulation for the provision of the supplies required by individual travellers, and the general principles of it may perhaps suggest some hints applicable or capable of being accommodated, to the business of public supplies. This subject, however, embraces a variety of considerations; nor am I yet prepared to submit

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any specific proposition respecting it, or to suggest with confidence, in the event of no correctives occurring to you, any adequate remedy for the evils alleged to exist under the present system.

Civil Advocate General, or Superintendent of Law Suits.

196. I cannot refrain from noticing in this report, a proposition which was lately submitted to your Honorable Board by the Board of Commissioners, a copy of their letter on the subject having been at the same time forwarded to myself; I allude to the recommendation that a Civil servant should be appointed, to superintend the transactions of Government in the Native Courts of Judicature.

197. The rules under which this office is proposed to be constituted, are laid down so perspicuously by the Board, that it is unnecessary for me to dwell upon the detail of the duty which would be assigned to it, or the advantages to the public interests which may be expected to result, from the conduct of the several law suits in which Government may be engaged, under the superintendence of such an officer. The appointment would, however, in my opinion be attended with many other benefits; indeed I should conceive that Government will itself derive advantage, from having a law officer to whom it may apply, whose whole attention will be devoted to the practice of the several Courts, and to the observation of the principles which guide decisions, whether in matters of civil or of criminal jurisprudence.

198. Entertaining this conviction of the expediency of establishing such an appointment, I beg to support the recommendation of the Board of Commissioners, and to propose to your Honorable Board, that a Civil servant be appointed to this duty, under the name of Civil Advocate General, or Superintendent of Law Suits.

199. There are no other topics connected with this important branch of our administration, which my observations or enquiries urge me to suggest for your consideration. Indeed so many anxious interests of the immediate juncture have pressed upon my attention, that I am by no means satisfied of my having done justice to the subject, which I lay before

before you. Still the suggestions of one, who has sought with great earnestness to inform himself accurately on the spot, and who has had the means of recurring to the amplest sources of instruction on the several points, must have their utility, altho' they may not be fashioned with all the perspicuity of deduction which I should have wished to connect with the exposition of facts. One general position I will advance from what I offer to your notice. The pecuniary advantages of the Company are in a rapidly progressive course in these Provinces. But it must not be for a moment forgotten, that they are precarious. By preponderance of power these mines of wealth have been acquired for the Company's treasury: by preponderance of power alone can they be retained. The supposition that we can discard the means of strength, and yet enjoy the fruits of it, is one that is certain of being speedily dissipated in the present state of India; were we to be feeble, our riches would be a dream, and a very short one.

200. The Board will observe, that in the above observations no allusion is made to the revenue administration of the territory placed under the control of the Resident at Delhi. There are undoubtedly in that division several features which distinguish it from the other districts of the Western Provinces, and I should have been desirous of tracing them in part, and of marking the shades of difference between an administration conducted under the Regulations, and one devised by the enlightened uninfluenced mind of individuals, and carried into execution with only the control of their own judgment. The report, however, presented to me by the Resident, did not reach me until after the above observations had been fashioned. I should now have difficulty to interweave it. It is nevertheless in itself so perfect in every respect, is so replete with the soundest principles, and elucidates them so ably and perspicuously, that I offer it with entire confidence to your special consideration; professing that as far as relates to the revenue administration of the territory under his charge, the conceptions expressed by Mr. Metcalfe are exactly consonant to those which I had entertained from other sources of information.

On the River Ganges,
The 21st September, 1815.

(Signed) MOIRA.

To His Excellency the Right Honorable Francis Earl of Moira, K. G.
Governor General in Council,

FORT WILLIAM.

My Lord,

We have the honor to acknowledge the receipt of the orders of Government, under date the 23d August 1815, transmitting to us the copy of a General Letter from the Honorable the Court of Directors in the Judicial Department, and directing us to submit our sentiments generally on the arrangements suggested by the Honorable Court; especially in regard to the probable operations of those arrangements upon the security and punctual collection of the Public Revenue.

2.—The great importance of the subject not only in the above points of view, of its practical effect on the Territorial Assessment, but also as involving a radical change in the administration of the Police, and as tending to introduce fundamental alterations in the general conduct of affairs in the Judicial and Revenue Departments, will plead our excuse for the delay which has occurred in the submission of our present address.

3.—The following appear to be the points in which those arrangements are chiefly connected with the Public Revenue.

1st.—To give facilities to the Ryots or under Tenants, in the prosecution of complaints against the Zemindars and Farmers and their intermediate Agents, for exactions under illegal and exorbitant distraint, or under summary processes of arrest and ejectment, and to ensure a more speedy, cheap, and uniform decision of such complaints.

2d.—To ensure to the Landholders a more speedy recovery of their just demands on their under Farmers and Tenants, than what can now be accomplished under the delays usually attending the decision of their summary suits.

3d.—To provide a more expeditious and effectual interposition of judicial cognizance in the adjustment of boundary disputes, of forcible dispossession, and of claims to crops, water—courses and alluvions.

4th.—To secure a more prompt and cordial co-operation of the Landholders in matters of Police for the suppression of crimes and the apprehension of offenders, by vesting them with the charge of Police, and by constituting the Collectors of Revenue to be Magistrates.

5th.—To re-establish the ancient institution of Punchayet with a view to the above objects, as well as to the simplification of judicial proceedings in general, and to a diminution of their expence.

4.—Having already under the instructions of Government submitted the draft of a Regulation for the re-establishment of the Maal Adawluts, and for vesting in the Revenue Collectors the cognizance of all suits relating to rents and distraints, we need only observe, in this place, that we have met with nothing to alter the opinion, which we have on other occasions expressed, that all questions between Land-

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lord and Tenant, will be adjusted more readily, more satisfactorily, and with more consistency in the principles of decision, by the Revenue Authorities, than by the Courts of Judicature.

5.—The expediency of arming the Landholders with the means of collecting their rents, as punctually as these are enforced from themselves, has led to the establishment in their favor, of a summary decision on all claims of rent, which, although open to a more deliberate revision, must, in nearly every instance, be final against the Tenant, from the impossibility of his defraying the expense, or paring the time necessary for the regular suit. A right decision of those summary claims, is therefore the first step to the security of the Tenants against arbitrary exactions, and a right decision must depend on an intimate knowledge of village accounts, and of the minutiæ of Revenue operations, which the Courts of Judicature cannot possess.

6.—This intimate knowledge, which it is in the power of every Collector to acquire, would, in ordinary cases, be competent to detect any attempt at falsification of the accounts on which the decision of such claims will generally rest.—But a further step for the security of the Tenants is, to provide against the falsification of the village accounts, by taking out of the hands of the Landholders the nomination and dismission of the village Accountants. We have accordingly under the instructions of Government already submitted the draft of a Regulation for constituting the village Putwaree, an Officer of Government.

7.—But the security of the Tenant is only provided for partially, if he cannot have a similarly summary redress against the exactions which the Landholders may actually enforce from him by duress or by vexatious distraint, he cannot pursue the tardy redress of a regular suit, independently of the expense, which may often exceed the origi-

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nal grievance —This class of people, whose means of existence depend on their daily labour, are equally ruined by the loss of time, as by the pecuniary charge attending a protracted litigation.

8.—Under the original constitution of the Maal Adawluts; all petty complaints between the Landlord and Tenant were referred to the Aumil, to the Farmer, or to any other local Revenue Agent, for adjustment on the spot. By this mode of proceeding, justice was probably not sufficiently ensured to the poorer, and therefore weaker party —But in the anxiety to prevent injustice, the existing system has put justice out of the reach of both parties. The re-establishment of the Maal Adawluts, even without the former usage of reference to the local officers, would facilitate and simplify the decision on all such complaints, and the former usage might also be advantageously revived under modifications, which should assimilate it to the ancient practice of Punchayet.

9.—We may observe in this place, that all Punchayet, whether in these cases of disputed accounts of rent, or in the general administration of Civil Justice, should be of the voluntary selection of the parties, or be nominated, *pro hac vice*, by the Court or Collector. Arbitrators by virtue of their office, or under a permanent delegation with a salary from Government, would soon degenerate into a source of the most flagrant abuses. The leading men of the brotherhood to whom the property of every Zemindaree, not yet alienated from its original constitution, belongs—the most reputable of the resident traders, and of those persons who live on their acquired incomes, would form a much more respectable source for the choice of arbitrators, than the Canoongoes and Putwarrees, or any other class of public Servants.

10.—Even the Landholders themselves, notwithstanding the great and summary powers with which the Regulations have armed

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them, stand also in need of a more speedy decision on their claims of rent. These claims we know to remain some times undecided fourteen months, and in these Provinces where the process of distraint is seldom if ever resorted to, this tardy decision may entail ruin on the Zemindar, whose monthly payments to Government admit of no procrastination.

11.—We are aware that the Collectors of Revenue in these Provinces, have in comparison of their fellow servants in the Lower Provinces, full employment for their time: But we believe that suits between Landlord and Tenant, might be decided more expeditiously by them, than by the Judges of the Zillah Courts. These suits are not helped by the requisition of technical pleadings and legal formalities. They are in general mere questions of accounts depending on the ascertainment of the annual rent, and of the intermediate payments, and when the Putwaree ceases to be the servant of one of the parties, they will be questions of easy adjustment. But however simple the decision of them may be, their number would probably preclude their meeting with a hearing sufficiently early in a Zillah Court, consistently with the due proportion of time to be allotted to the file of regular suits, and to the discharge of magisterial functions.

12.—We are at the same time of opinion that the general avocations of the Collectors in these Provinces, will not admit of their relieving the Zillah Judges from their last mentioned functions, and that whatever advantage or facilities may be contemplated in the establishment of any efficient Police, from vesting the executive duties of it in the Revenue authorities, in consequence of their more immediate connection with the Landholders, on whose co-operation its success must principally depend, no Collector can bestow the necessary attention to its details, while the fluctuations of the Territorial assessment, under the constant recurrence of short settlements, continue to call for so large a portion of his time.

13.—We may also observe that the duties and situation of Collector and of Magistrate, are scarcely compatible. The principal influence of a Revenue Officer, and from which the greatest advantages and facilities are derived in the fiscal operations of Government, arises from the unrestrained intercourse between him and every gradation of the agricultural classes—from the confidence which popular manners in such intercourse cannot fail to inspire, and from the numerous benefits accruing to the Landholders out of this intimacy. The terrors which, on the contrary, attach to the duties of the person of a Magistrate, must naturally tend to an estrangement, prejudicial to the business of Revenue—which would probably be thereby more impeded, than the business of Police could be benefited, by the union of the offices.

14.—If the transfer of the magisterial functions to the Collector, should imply a re-establishment of the subordinate superintendence of the Police in the Tehseeldars, as the intermediate channels of his communications with the Landholders, many objections which were exemplified in the former system of Tehseeldarie Police, may be stated against this measure, and if the proposition for vesting the Landholders with the charge of the Police within their respective estates, is intended to supersede the present establishment of Police Darogahs and Thannah Burkendazes, it might be apprehended that such a measure would be at any rate premature, until the village Police of the Zemindars shall be properly organized, and perhaps injudicious in foregoing an agency, which however imperfect it may still be, is not wholly inefficient, for an experiment of doubtful result.

15.—This experiment however is in these Provinces, more simple, than in Bengal. The term Landholder, means here, a very different description of persons, than in the Eastern part of the British dominions. By a strange misnomer, the Krones or hereditary Collectors in Bengal, have under the denomination of Zemindars,

been

been recognized as the lords of the soil in the whole extent of their Jurisdiction, but in the Western Provinces, including Benares, and the greatest part of Behar, the village Proprietors having fortunately retained the name of Zemindar, remain undisturbed of their rights, while the middle men, under the name of Talookdars, have in most instances ceased to exist.

16.—To vest in a Bengal Landholder, the Police jurisdiction of a whole pergunnah or of several pergunnahs or of an entire zillah, and to call forth the executive agency of a village Zemindar in preserving the peace within his petty domain, are two questions of a very different nature. The latter measure might in fact be adopted without interfering with the present establishments of Police, but rather as an auxiliary to them.

17.—We believe that the Landholders or village Zemindars of these Provinces, would be found sufficiently alert in their exertions, for the Police of their estates under proper encouragement, and willing to meet the responsibility imposed upon them by the usages and institutions of the country, but we may observe, that unless the means with which the same usages and institutions had provided the Landholder for maintaining the Police, be left to him, his responsibility will be rather a penalty on himself, than a benefit to the public. The means to which we allude are the village watchmen, over whom, as long as the nomination of them remains with him, he can exercise the necessary authority, but who if selected directly by the Magistrate, will not only be independent of the Landholder's controul, but also, being probably strangers in the village to which they are appointed, may be disposed to create to themselves a separate authority, wholly distinct from, and perhaps at variance with the interests of the village Community.

18.—To emancipate the village watchmen from the servile state in which they were placed many centuries ago by the politi-

cal

cal institutions of the Hindoo legislators, would be to destroy, with a sudden and violent revolution, the whole structure of village Society. The menial condition of the Goraiet or Dhurmuck, is a consequence of the law of caste, and he is in some points of view, the servant of all the superior classes residing in the village. He receives a maintenance, not from the Zemindar alone, but from the inhabitants at large, partly in grain, partly in land, and partly by contributions from each house of a particular description.

19.—By creating the village watchman an Officer of Government, with a fixed salary, payable from the Public Treasury, the most odious and intolerable tyranny would be in effect established in every village. An authority would be practically set up over the higher classes adverse to their most cherished prejudices, and equally revolting to their religious opinions as to their domestic habits and feelings. The case is not altered, except as far as caste is connected with the question, by the appointment of Rajepoots or even Bramin Barkendazes to replace the village watchman. It is equally a reversal of the natural order of society.

20.—In the gradation of ranks the village watchman is subservient in all Police matters to the Zemindar, who again is responsible for the peace to the local superior, and ultimately to the ruling power, and it appears better to confine and enforce these relations, than to hazard the injudicious application of abstract principles to circumstances which cannot be controuled. If the Goraiet be released from his dependance on the Zemindar, the latter must be freed from his responsibility to Government—they both stand on the same grounds of manifest necessity, just compensation, and the usage of centuries—they both naturally arose from a certain stage of civilization, and from exigencies, which still exist.

21.—After consolidating the Zemindar's authority over the village watchmen, by any additional powers which might be deemed ne-

cessary

cessary, it would remain to define, on just principles, the responsibility of the Landholders themselves, and to devise the surest means of calling into full effect that responsibility, and the duties attaching to it.

22.---The principal of these duties may be shortly enumerated. The Zemindars are bound to apply their means of information, and the influence and authority which they possess over their dependants, to muster the Tenants on the first intelligence of a crime, within the limits of their estates, to use instantly, and without any application from the Magistrates or Police Dorogahs, every exertion in their power for the discovery and apprehension of offenders; to guard their villages by night, and the high roads by day; to maintain an accurate scrutiny into the conduct, character, and means of livelihood of all their Tenants, and to watch the first advances to vice among them.

23—All this responsibility, and perhaps more, attaches on the Zemindar.—It is expressed or implied in the terms of the stipulation, under which he holds his lands.—It comes within the understood obligations of his tenure, according to the invariable usage and custom of the country; and has been acted upon, whenever a temporary vigor pervaded the native governments.—It is essentially necessary to a good Police, and, in the western provinces, may be safely looked to, for the means of securing that desirable object.

24.—The Zemindar however can be equitably liable for only as much activity and vigilance as he has the means of exerting.—It is therefore an indispensable act of justice to him, to declare that the village watchmen are subject to his orders, to be appointed and dismissed by him, according to former usage—that certain classes of the population of the village are, according to the custom of the country, liable to be called upon by him for their services, in aid of the Police; and that all persons are bound to furnish him with information, in all matters connected with the public peace.

25.—With this assistance, it is scarcely possible for an occurrence out of the ordinary routine, to happen on his estate, without his immediate knowledge; and with the whole numerical strength of the village, thus at his command, the onus probandi should rest upon him, that in every such occurrence, he did exert all due activity and vigilance and if he fail to establish this, to the satisfaction of the Magistrate, he should be subject to all the penalties of the law; and ultimately to the confiscation of his estate.—But without this assistance, and if on the contrary, opposed by an independant class of chokedars, nominated by the Magistrate, and placed at the exclusive disposal of the Thanadar, the Landholder can scarcely be blamed for his present supineness.

26.—As the Zemindar is, by the express and implied terms of the contract under which he holds his lands, bound to prevent crimes, and to preserve the peace within his estate.—As his ability to perform this engagement, if the village watchmen remain at his disposal, is undoubted.—As the law and usage of the country have from time immemorial fixed on him this responsibility, and as local institutions and the peculiar structure of society, if left in their original relations, sufficiently fortify his authority in this respect, nothing seems wanting but to hold out some inducement for the cheerful exertion of the energies which he possesses, in the performance of the duties to which he is amenable.

27.—This inducement might be found in bringing the Landholders into direct communication with the Magistrates, without the intervention of a Thana Darogah, and in vesting them with the executive charge of the Police in their respective villages, under the immediate orders of the Magistrate.—Penalties alone, will never command zeal, nor compulsion produce more than a luke-warm and reluctant performance of duties.—There is no reason for supposing that the Landholders would not exert themselves, if they found

themselves

themselves treated with confidence and distinction —But at present we believe that their only connection with the Police is, through censures and punishments for neglect of duties, which, when the chokeedars are deputed from the Sudder Stations, in the nomination of the Magistrate, the Zemindar has not the means of performing.

28 —In a principal point of view, we may also observe, that the pay of the chokeedars thus appointed by the Magistrate, would in most cases be a heavy burthen on the Landholders, and might interfere materially with the public Revenue.—The majority of villages paying separately on engagements with Government direct, do not exceed an average assessment of Rupees three hundred, and a direct contribution in money of the pay of even a single chokeedar, or Rupees thirty six per annum, must either come as a drawback on the small profits of the Zemindar, or as a cess on the scanty population. On a former occasion when the Magistrate of Cawnpore required the Landholders to defray a similar establishment of village chokeedars appointed by himself, a deduction of five per cent was claimed by the Landholders, to meet this expense ; and on a recent occasion of a similar requisition by the Magistrate of Agra, a deduction of three per cent has been similarly claimed by the Landholders.

29.—As the number of village Zemindars under engagements to Government, exclusive of the few remaining Talookdars, exceed 45,000, any measures which may call them into active co-operations with the Police, may be said to bring that number of additional agents to its aid.

30.—With regard to the decision of claims to disputed boundaries and to crops, water-courses or alluvions, it appears to us that the only mode of preventing the serious affrays which grow out of such disputes, is to vest the Magistrate with the power of determining the point of intermediate possession, while the question of right is

undergoing

undergoing a more formal enquiry in the civil Court:---The first cognizance of such cases, is evidently of criminal jurisdiction, as they always originate in a breach of the peace; and in fact a previous breach of the peace is necessary, to entitle the complainant to the summary redress, which the civil courts are authorized to give—The punishment of the parties on a criminal prosecution, for the affray, will never alone suffice for the prevention of such outrages, while the cause of dispute is left to recur at every season of ploughing, sowing, watering and reaping, under the tardy process of a civil suit.

31.—This remark applies, with even more strength, to all cases of forcible dispossession, which, from their nature, must be questions of criminal cognizance, and in which the original interference of the Magistrates, on the breach of the peace, should evidently include a decision on the point of possession, as the only means of preventing it's recurrence.

32.—In these cases of disputed boundaries, in counter claims of water-courses and alluvions, and generally, in all cases where the point in litigation cannot be brought to issue on the documents or evidence before the court, but requires a local inspection, the question of right would also be conveniently taken out of the civil court, and made determinable by punchayte or arbitration, under the supervision of the Collector.—We believe from our own experience in judicial offices, that no Zillah Court, and, a fortiori, no Court of Appeal, ever gave judgment with a satisfied conviction upon the local report, or survey of an Aumin.

33.—We may also notice the ill effects, which a protracted discussion of the disputes alluded to in the two preceding paragraphs, has, in regard to the public revenue, as well as to the peace and well being of the community.—They furnish a constant plea for balances, so long as the litigation continues, and the balance retained, will always be much greater, than the value of the thing in dispute.

34.

34.—There are however some cases of this description, which, although not attended with any acts of violence, authorizing the interposition of the Magistrate, tend to disturb the internal economy of a village, and to endanger the public revenue: cases where a single individual, is frequently able, by the mere turbulency of his character, to create to himself an ascendancy over his peaceable neighbours, and to tyrannize over their fears of the consequences of a quarrel; and it is indeed surprising to see to what extent the latter, frequently submits to the tyranny, and to this assumed superiority—such a man will turn out his cattle on the fields of his neighbours, to feed upon their crops, divert the water of their canals, and destroy by other acts of petty tyranny, the whole harmony of a village.—In these cases the summary intervention of the Collector, through the Maal Adawluts, would be more satisfactory and effectual, than any redress obtainable from the Dewanny Court, even if the parties could reduce their grievances into a shape, which the latter Courts might consider cognizable as a cause of action.

35—The right of property in puttees, or in the further sub-divisions of landed estates, appears also to be a point in which the original cognizance of the Collector, would be conducive to the ends of substantial justice —It is in fact a fiscal question as far as regards the admission of the parties into the engagements with Government.—The Regulations, adapted to a state of property, which the British Government had itself created in Bengal, have been extended to these Provinces, without any consideration of their irrelevancy to the nature of the landed tenures here ; laws, founded on the principle of a single proprietor, or of any number of joint proprietors possessing a specific interest, are wholly inapplicable to a community of property, where the nominal possessor of a Putty, or a Thake, or of a Bherree, is no more than the representative of a general right, in which every resident tenant, is an equal participator.

36.—The convenience of simplifying Revenue Accounts, having led, at the introduction of the British Administration into these Provinces, to the measure of taking engagements, from a single Zemindar for each estate, the effect of these laws has been an entire revolution in the state of the landed property, not only in public sales where the whole estate has been transferred, in fee simple, to the purchaser, but also in private sales, where the purchaser, by decrees of the courts, founded on the supposed exclusive right of the engaging party, has been able to annihilate the rights of the numerous copartners, and to convert these persons into mere tenants at will.

37.—In many of these cases, the Courts are the blind instruments for accomplishing the purpose.—A suit is brought under the alleged purchase of the whole, or of a portion of a village, and, as the parties are in previous league, the suit is either confessed, or not defended ; and a judgment passes of course, with an order of possession in favor of the plaintiff, who, by processes of distraint, and by summary suits for rent against the minor proprietors, very soon effects the establishment of his individual property ; as these petty proprietors are themselves the cultivators of the few beegas, which constitute their share of the estate, redress, through the slow process of a regular suit, is out of their reach.

We have, &c.

(Signed) E. COLEBROOKE,

Board of Commissioners,

Furruckabad,

the 25th April, 1817.

To

To Sir J. E. COLEBROOKE, Bart. and W. H. TRANT, Esq.

Board of Commissioners in the Ceded and Conquered Provinces.

Gentlemen,

I am directed by His Excellency the Most Noble the Governor General in Council to acknowledge the receipt of a letter from you dated the 25th April last.

2.—The Governor General in Council has derived much gratification from the perusal of the able and interesting report now acknowledged.

3.—The questions discussed in it, having however a more immediate reference to the judicial branch of the civil Government of this country, and it being obviously expedient that the whole subject should be at once brought under deliberation in the most comprehensive and connected manner, His Lordship in Council proposes to take the several suggestions contained in your Report into consideration in the Judicial Department, and refrains therefore from passing any particular orders or observations, on the present occasion.

I have, &c.

(Signed) H. MACKENZIE,

Sec. to Govt.

Fort William, the 20th June, 1817.

To H. MACKENZIE, ESQ.

Secretary to Government.

SIR,

WITH reference to the orders conveyed in your letter of the 4th September last, I am directed by the Board of Revenue to request that you will submit to the Honorable the Vice President in Council, the accompanying copies of Minutes, containing the sentiments of the Members respectively, on the arrangements suggested in the General letter from the Court of Directors of the 9th November, 1814.

I have the honor to be, &c.
(Signed) J. P. WARD,
Acting Secretary.

Revenue Board,
5th May, 1818.

MR. W. O. SALMON.

It appears that we were called upon by Government, as far back as the 23d August 1815, to report our sentiments generally on arrangements suggested in a letter from the Honorable the Court of Directors, in the Judicial Department, dated the 9th November 1814. We were again called upon by the Territorial Secretary, on the 4th Sep-

tember 1817, to furnish the report required at as early a period as the importance of the subject would admit.

2d.—Under the discretion afforded to us in the 4th Paragraph of the letter from Government, of the 23d August 1815, we referred to the several Collectors noticed in the margin,* and desired them to state their opinions on the subject.

* Dacca, Mymensing, Purnea, Dinagepore, Rungpore, Nuddea, Burdwan, Cuttack, 24 Pergunnahs, Hijlee, Behar, Shahabad, Sarun and Tirhoot.

The undermentioned Collectors have in consequence delivered their opinion.

Dacca, 30th October 1817.
Mymensing, 28th February 1816.
Nuddea, 17th ditto ditto.
Cuttack, 29th September 1817.
Hijlee, 12th June 1816.

The undermentioned Districts have been intermediately transferred to the control of the Commissioners of Behar and Benares.

Purnea,
Behar,
Shahabad,
Sarun,
Tirhoot,
Dinagepore,
Rungpore.

The questions, involved in the extract from the letter of the Honorable Court transmitted for our consideration, are of the utmost importance to the interests of the state and to the interests of the community.

The interests of the state are materially concerned in the punctual and mutual realization of the public revenues and private rents, thereby

thereby securing the extension and improvement of cultivation, and, generally the resources of the country ; nor are the interests of the state less affected by the prompt and complete efficiency of judicial administration, which in polity may be considered to embrace the reciprocal tie, between the prince and the people, " subjection, and protection."

The efficacy of laws, consists fully as much in preventing public offences and private injuries, as in redressing them when committed.

The Honorable Court have considered that the extant evils derive their origin principally from the weight and multiplicity of Judicial and Magisterial functions, which operate to retard the adjustment of civil suits, and the discovery and punishment and future suppression of criminal offences.

The remedy contemplated would seem to be the separation of certain of the judicial functions from the European Officers of that Department, and the annexation of them partly to European Officers of the Revenue Department, and partly to native tribunals designated Punchayets, and likewise the entire transfer of magisterial functions to the Collectors.

It would seem to be proposed that the description of cases which should fall to the cognizance of the Revenue Officers or Collectors, are " disputes respecting land rent between Zemindars and their under-tenants, and between the latter and their Ryots, or actual Cultivators of the soil, and complaints of undue exactions on the part of the two last mentioned descriptions of persons."

The Honorable Court in referring to Regulations VIII, of 1794, and V, of 1812, observe, " that these Regulations as they affect both

Judges

Judges and Collectors, appear to be very imperfectly adapted to the objects they have in view, which in our opinion can only be effectually obtained by a provision, which should enable the Zemindars on the one hand by a prompt and summary process to realize their dues from the Cultivators, and thereby fulfil their engagements with the state, and on the other hand, which should extend similar facilities for the protection of the Cultivator from the exactions of the Zemindars; we are strongly inclined to think that by bringing this two-fold object under the bonâ fide cognizance of the Collectors, subject to the revisal of the regular Courts of Justice in cases of sufficient importance, both descriptions of our native subjects would be greatly benefited."

I do not hesitate to acknowledge my entire concurrence in the principle here laid down by the Honorable Court. I am of opinion that the Judicial file would not only thus be reduced very considerably in point of numbers, and that the primary and sole advantage contemplated in summary suits; namely, that of simple process, prompt enquiry, and speedy decision, would be thus effected; but that the Collectors from the nature of their office, their experience in Revenue transactions, and knowledge of Revenue accounts, ought to be more competent to adjust such disputes than any other European authority. Such disputes are in reality for the most part matters of mere account, and though the lamentable neglect to enforce the Regulations regarding the exchange of written engagements between Landlords and their Cultivators, may some times involve the necessity of further investigation, the whole course of such investigation must generally be within the more immediate competence and experience of the Revenue Officers. I could wish it were positively enacted that no summary suits should be cognizable wherein Pottahs, Kuboolieuts, and Kistbundies were not exhibited by the respective parties, as their essential documents, or unless it could be sufficiently or satisfactorily shewn, that the absence of such engagements had been owing to the neglect of the respective parties, to adopt the measure, or to obey the notice

contained

contained in Sections IX. and X. of Regulation V. of 1812. Indeed it would be particularly desirable that that rule should be made absolute upon all Zemindars, Landholders and Cultivators of *whatsoever description*, whose leases holden or given, may have expired. I am aware that it has in some districts been so construed, though literally by Sections IX. and XI. it is immediately applicable to purchasers of land at public sale only, and to sequestrators on the part of Government, managers on the part of the Court of Wards, and to Farmers whenever estates or portions of estates may be let to farm under the authority of the Board of Revenue or Board of Commissioners. If under these observances written engagements were uniformly enforced and if under the Canoongoe Regulation. " A list of the Putwarries in each Village, and a Register of Pottahs granted by the Landholders to their under-tenants"—(which should include Ryots and Cultivators of whatever description) were regularly kept, the Collectors would be able to decide summary suits at one hearing probably, and (as I have had occasion to observe whilst Collector of Benares) the decision of one suit, would frequently effect the adjustment of all other suits and disputes pending on account of the same Village. It is stated in Section XIII. of Regulation XIX. of 1817, that in some instances, " a strict adherence to Section XXI. of Regulation V. 1812, has operated to retard the investigation and decision of the suits in question." It is to be supposed that this position is founded on sufficient data, not merely assuming a part for the whole ; but I have not known it exemplified in the districts I have been particularly acquainted with ; and it is also to be observed, that with a view to enforce the punctual attention of the several Collectors to this branch of their duty,—the Board receive quarterly reports of Malguzarry causes decided, filed, and pending. With deference to the suggestions of the Honorable Court, and with a view to lighten the burthen of the regular Courts of justice, I would recommend as a preferable measure, that no appeal from summary decision should lie to the Judicial Courts, but that the party dissatisfied should sue regularly ; for

whilst I should be desirous that no expence beyond the irremediable one of the absence of the parties and their Putwaree from their homes and occupations should attend summary suits for rents, I should feel no hesitation in subjecting the prosecutor resorting to the Judicial Court, to all the expenses incidental to a regular suit. If the appeal were admitted and execution of the Collector's order stayed in consequence, all the good effect of summary suits and decisions would be defeated. Any party dissatisfied with the decision of the Collector on very manifest grounds, (with reference to the nature of summary suits, and the degree of cognizance attaching to them) might be allowed to present a petition addressed to the Board of Revenue, to be forwarded by Dawk by the Collector, stating the same, and praying that the Board would order the Collector to revise the objectionable part of his proceedings; the Board would sanction or reject the petition, as the circumstances of the case might require. Exclusive of the advantage which I am inclined to think, would result to the Revenue and Judicial Departments, from this transfer of official functions, I am of opinion, that the measure would generally be acceptable to that part of the community to whom it is applicable; they would be relieved for the most part at least from the tardy forms of judicial process, and from the intrigues and extortions of Vakeels, and would come to the Collector's office with their accounts in their hands and attended by their Putwaree (principally the only witness requisite,) and with the exception of the plaint which should be in writing, the interrogatories and answers might be delivered vivâ voce, and recorded on the Collectors proceedings, from their own mouths.

The Honorable Court also propose (Paragraph 82 to 86,) to vest the Collectors with jurisdiction in regard to disputes, respecting property in land, when the parties either with or without a Punchayet may prefer the decision of a Collector; and that disputes respecting boundaries, be brought within the jurisdiction of the Collector.

I am clearly of opinion, that such duties might be more promptly performed in a summary manner by the Collectors than by the European Judicial Officers. I think the knowledge of localities and of circumstances, are more immediately within their reach, and they have the means of making a personal survey, without much inconvenience to their public functions, which a Judge has not; and as the interests of the public revenue are so closely connected with the possession of land, it is particularly desirable, that the Collector should both know and decide in the first instance disputes of that nature. Deficient as the information of the Revenue authorities has been, in regard to the extent and boundaries of landed estates, it has been found that Government have often, and do continually lose in their Revenues, by gradual usurpations and encroachments. The stronger party gets possession, and having once gotten, cannot be compelled to restore without a regular civil suit and decree, and sometimes (in Bengal less frequently perhaps, than in the Upper Provinces, because of the lightness of assessment) the Estate, from which such usurpations and encroachments have been made, becomes unequal to it's Jumma, and after passing through two or three hands by public sale, (whose ignorance of the causes of failure may have induced purchasers to bid in the first instance,) is thrown upon Government, and ultimately is resettled at an inferior Jumma, whilst the original Zemindar, the suitor in the Court, having lost his property, by a sale for balances not accruing through other fault, than that, of his not being stronger or more violent than the usurper, either has not the power or the inclination to go on with his suit; or even if he does, in the interval between the filing and the decree, the interests of Government are lost sight of, and which ever way the cause may terminate, the deficiency in the Jumma is never supplied. It is particularly necessary to the interests of Government, that the Collectors should be informed of every change, alienation, acquisition, or dereliction of landed property, as well to support the rights of Government, as to watch over and superintend the rights of those persons whose dependance, to make good their engagements for the public Re-

venue

venue may, and frequently does solely rest upon their landed property.

With this view, I should be glad to see the Collectors vested with jurisdiction in all cases concerning rents of land, disputes regarding crops, boundaries, water-courses, alluvions, and generally all suits regarding rent or possession of land. And in order that the Collectors might have full information of the names, places of abode, and reality of persons succeeding in any way to Estates, and to provide for the security and due management of such Estates, I should be desirous that Collectors should be qualified, more decidedly than they are at present, under Section XXI. of Regulation VIII. of 1800, to *enforce* the due and timely Registry of all names concerned in succession, or any other transfers whatsoever; and that the precautionary powers now vested by Sections IV. and V. of Regulation V. of 1799, in Judges, with regard to disputed successions, should be committed to the Collectors, who should report their proceedings in all such cases, for the approbation and confirmation of the Board of Revenue or Commissioners. It may be expected that the extension of the Canoongoe Regulation to the Provinces of Bengal, will enable the Collectors to effect some of these measures more promptly; still I am inclined to think, that it should be a part of the Collector's duty to enquire into the nature and grounds of succession *to* or acquisition *of* an Estate (of a *Sudder Malguzar,*) and in cases of disputed title, to record the name of the best or most ostensible claimant, or of any manager whom the parties may agree to appoint, till the matter of right be decided by arbitration or upon regular suit, or in the event of their not agreeing either unanimously or by plurality of voices, to any manager, that the Collector should be authorized to commit the Estate to the fittest person amongst them, whose fitness should depend upon his character, his permanency of residence on the spot, and the responsibility of his security, and to record his name in the Office Registers as the conditional and temporary malguzar of Government. I am however of opinion, that such questions would very aptly come within the scope of the functions

functions and services of Punchaytes, either as referees at the instance of the Collectors, or arbitrators at the instance of the parties.

I am inclined to think that the interference of the Collectors, both in boundary disputes and in disputed successions or mutations of landed property, should only be intermediate and not conclusive. The question of temporary possession should be determined promptly by the Collectors, subject to the approbation and confirmation of the Board of Revenue or Commissioners, but the question of permanent right should be determined only by a Judicial Court, upon a regular suit, or by the native tribunals of Punchayet or Jury. In all probability, the Collector's summary proceedings holden on the spot and almost at the moment of occurrence, would aid the decision of the Courts much, and obviate in a very great degree the "labyrinth of difficulties which the Judge has to encounter," when suits have been long pending in the Dewanny Court; at the same time it may be contemplated that the summary proceedings and decision of the Collectors would generally serve as the basis of mutual and final agreement amongst the parties, for even though the whole truth should not be drawn to light, and every opening to cavil or objection removed by such investigation, a way would be laid open to amicable adjustment, which persons, not irreclaimably litigious, would be induced to follow cheerfully, before their animosities had become rooted and the spirit of resentment, rather than the principle of reason and right, had actuated them to all sorts of plots and machinations.

Thus though it may be urged that the proposition of making the Collectors decisions only summary, would not utterly preclude the institution and cognizance of such suit by the Courts, I think it may be fairly assumed that the measure would *diminish many* and *facilitate* the *competition* of *all*, and whilst the litigious or pertinacious would still have the ultimate resource of the law, the mischief of delay and the injury of violent acquisition and persisted usurpation

 would

would be remedied or provided against. I have already adverted to the services of Punchayets in enquiries of this nature, and I am disposed to think they would be eminently useful and frequently willingly resorted to by the parties, and even where they were not sought after or accepted as complete arbitrators, the Collectors might apply to them for very material information, whilst in matters of cast and religious rites, I should conceive the Judges would refer to them as the very best instruments of settlement of disputes.

The Honorable Court treat of the proposition for reverting " to the ancient and long established customs and institutions of the country," by making use of the Agency of " the more permanent and natural authorities in the interior of the provinces," in the 42d and 60th Paragraphs of the Copy of the General Letter now under consideration.

The Honorable Court describe the Officers alluded to, as now passing by the appellation of " Munduls, Mocuddums, or Gomashtahs," adding that " It is by these Officers in concert with the Currum or Putwaree or Village Accountant, that the public concerns of the small communities to which they belonged were regulated and administered, and by whom with the aid of Punchayets or Native Juries, were settled and adjusted (as a branch of those concerns) the litigations occurring amongst their neighbours."

If a plan so admirable in theory, could be reduced to immediate practice, I am of opinion that such a measure would be hailed as a great blessing to the country.

It would operate very materially to improve the morals of the people, to wean them from the apathy and mental indolence which has sunk them in the barbarity of ignorance, and rendered them careless of their duties as subjects of the state ; and as Members of Society.

It

It would excite them to laudable emulation to acquire respectability of character and reputation of knowledge. It would serve to teach them that "every subject is interested in the preservation of the laws, and that it is incumbent upon every man to be acquainted with those at least with which he is immediately concerned, lest he incur the censure as well as inconvenience of living in Society, without knowing the obligations which lays him under." In bringing about such a state of things the qualifications necessary for the duties, and the results from the due discharge of such duties would gradually effect a most desirable reformation in the character and condition of the people generally. "Quid Leges, sine moribus vanœ, proficiunt"—is a maxim too strikingly exemplified in this country.

It has been very justly remarked that "good laws are essential to good Government, arts and sciences to the prosperity of a nation, and learning and politeness to the perfection of the human character;" but these in order to exalt a people, must be the *result* of the *natural progress* of civilization, not of any *adventitious ferment* or violence from abroad.

Perhaps it may be said of our code, that it was calculated for a more refined and enlightened state of Society, than we found; that it rather anticipated a sudden and precocious improvement in civilization, than waiting for its gradual and natural progress made in the interim, the most of existing circumstances; that it rather pursued the chimera of moulding men to laws, than of moulding laws to men.

The result has shewn the expediency of reverting to ancient and more simple institutions.

In the present state of our polity, the natives are accustomed to look up to *Foreigners* and *foreign* institutions for rule, for guidance, for redress, and for advancement, they feel no common interest for each

each others welfare, and neither the zeal or scarcely the means to ameliorate the condition or superintend the welfare of their fellow-citizens, and (in the language of the discerning author above quoted) " when mankind are obliged to look up to a *Master* for honor and consequence, to flatter his foibles, and to fear his frown, *cunning* takes place of *wisdom*, and treachery of fortitude, the mind loses its vigor, and the heart its generosity."

The re-adoption of Punchayets and the establishment of native juries, would seem to give promise of amending the system of administration, both as it may improve the people and lighten the duties of the European Officers. In the commencement some obstacles may occur (principally from the ignorance into which the orders of people, contemplated for selection have latterly been reduced,) but it will surely be desirable to make the experiment, and in the progress of experience to ascertain both the advantages and evils of such a system, with a view to encourage and amplify the one, and gradually to remove and remedy the other. The description of persons alluded to by the Honorable Court are the Munduls, Mocuddums, or Gomastahs, and the Putwaree or Village Accountant. In former times under the native Government, these classes were considered as respectable, and having authority and consequence amongst their own communities; and both their privileges and transactions kept them in intimate relation and mutual confidence with the Ryots, and others of their villages and vicinities. But since the decennial settlement has thrown almost the whole power, influence, and controul into the scale of the Zemindars or Sudder Malguzars, it is to be apprehended that these persons are sunk into dependence and servility. It is notorious that the Putwarees are mere tools of the Zemindars, that they are compelled to deliver up the *true* accounts and documents of their Offices, periodically to the Zemindars and to *fabricate false* accounts, and frequently to swear to them at the will or by the order of

their

their masters. The new Putwaree Regulation may in some degree counteract this evil.

From what has been before observed, if we were to look to the higher orders of the community for jurors or arbitrators, "propter honoris respectum," the Zemindars or Sudder Malguzars would first present themselves as nominally, the gentry of local divisions, but it is to be lamented that many of them (particularly in Bengal) are non-residents, and from the nature of their relation with their Ryots, would generally be, directly or indirectly, rather parties in suits, than disinterested inquisitors, and might thus be challenged or objected to as incompetent, " propter affectum." Indeed until the Munduls, Mocuddums, or Putwarees, shall have been in some measure rendered independent, similar objections might be urged against *them,* particularly in cases of exactions and oppressions for rent; but it is probable that a reference to ancient institutions and to the privileges of this class of people, when they did perform such services and were confidently resorted to for such purposes, will afford a clew for their establishment on a liberal and competent footing.

The objections above urged, principally refer to disputes and claims for rents; and probably it would be advisable that those should still be adjusted by European Officers (the Collectors,) unless the parties spontaneously apply to arbitrators of their own community

For the reasons above assigned, of rendering the Natives willing and useful instruments of internal polity, I should be glad that the *resident* Zemindars should in fit cases, be employed as arbitrators or jurors, that thus they might be induced to qualify themselves and considering such service, as a respectable and responsible duty to the country, to desire such a mark of personal distinction. In boundary disputes, Alluvion lands, claims to succession to estates, (on the matter of *fact,* not on the point of *law,* without reference to professed expounders of

of the respective codes, Mussulman, or Hindoo,) and generally in all common cases of dispute, a Jury comprizing "liberales and legales homines de vicineto," might be empannelled at certain periods (say twice or thrice a year,) or specially at the time, and for the particular occasion to take cognizance of all such disputes within the jurisdiction vested in them, (say one or two Pergunnas)—The petition of complaint should be presented to the Judge of the Zillah, who would order thereupon that it should be referred to the first Jury to be empannelled (except where the nature of it would appear to require a regular suit in the Civil Courts,) and at the period of the Jury assembling, *all* such complaints might be committed to them to proceed upon. The complaint being already in writing, the rest of their proceedings might be conducted "vivâ voce," to the decision which should invariably be in writing, and of which copies should be delivered to the parties, and a copy furnished to the Zillah Court for record; such decision should be final, unless in cases of particular error, when an appeal might lie to the regular Judicial authorities, Native or European. The parties might be allowed to challenge a certain number of jurors, to which end the number of persons to be summoned, and the number of persons to constitute a Jury, would be determined by local circumstances or general considerations. It may be alleged that the arrangement above proposed, would bespeak an innovation on *old Customs*, so desirable of re-adoption, but I would rather wish to be understood to suggest such a plan, in the event of the long disuse of such customs rendering exactitude of imitation incompatible, or any modification of them necessary.

If after a reasonable time for the progress or maturity of the system, the result of experiment should be favorable to its continuance, it might be hoped that very many, if not the whole of the civil suits on the judicial files would be greatly reduced without likelihood of future accumulation, and the European Officers of those Departments might be enabled to devote more of their time to Magisterial functions

functions, and to personal visitations for purposes of Police, when they would at the same time be enabled to ascertain on the spot, the general reputation and confidence which the Mofussil or interior Juries maintain amongst the Inhabitants. I confess I had rather convert the services of the native part of the community to this description of public functions, than to any exercise of authority in regard to public offences, or arrangements of Police, beyond that of aid and information to the superior and subordinate Officers of that Department. The natives are not in their present degree of civilization qualified to be trusted with power, they less understand the right of *persons*, than of *things*. The Mussulman rule of Police was vigorous, but it was rigorous and oppressive in the extreme, "injuriam facere, id imperio ute," was too much the system of Mahomedan administration. That the Zemindars and other orders of people of the country, might be made eminently useful in coadjuvancy and co-operation, there is little doubt, but if vested separately with power and opportunity of personal oppression, I greatly apprehend they would use it for their own, rather than for legal purposes, or for the public good.

It is with hesitation and very considerable deference that I should presume to offer my opinion on arrangements connected with Police or with Criminal Justice, but with reference to the question of a Collector's competence and superior qualifications to discharge the duties of a Magistrate, I do not scruple to aver that neither his habits, his experience or the nature of his functions, as a Revenue Officer would serve to render him a preferable person. The division of the Revenue and Judicial lines have deprived all the Collector's of the present day, of the opportunities of learning the duties of a Magistrate in the first instance, and of improving in them afterwards by practice; and I imagine it will be admitted that there is no sort of public office, where the advantages of experience and practice are more essential. I do not mean that any length of time is absolutely necessary for the purpose, but that to profit by such experience, a man's occupation

should

should not be two-fold, and totally distinct in their nature; if a Collector were to become a Magistrate, he would either turn out a good Police Officer, and a bad Collector, or a bad Police Officer, and a good Collector; it is probable he would continue to devote his attention to that branch in which he feels himself best versed. The acts both of a Collector in *certain* cases, and of a Magistrate in *all* should be prompt—delays would be frequently attended with loss in the one Department, and would be irremediably pernicious in the other, yet I imagine if both offices were united in the same person, delays would certainly occur in one or other. Very deep research or maturity of judgment are not essential qualities in a Magistrate, but quickness of intelligence, activity both of mind and body, an aptitude of tracing events, and of discerning particular circumstances and a dexterity of examination of persons, (which can only be acquired by practice,) are almost indispensible. The habits and routine of a Collector's duty, are not of such a nature; regularity and accuracy of accounts, a knowledge of the description and validity of landed tenures, and of forms and usages; in short an intimate acquaintance with landed possessions, and their varieties, and with local peculiarities, and numerous other avocations of a miscellaneous nature, form the principal part of a Collector's duty. It will be acknowledged that these are totally distinct, from the qualities requisite for a Magistrate, though they are in very many points closely connected with matters of Civil Justice. Indeed I have generally been of opinion, that to be a good Judge, a man should first have been a Collector, and to be a good Collector, a man should have had some experience in the mode of cognizance, and of Judicial investigation which under the former system of the service, he would have had as Register to a Zillah Judge.

I know not whether it would be consistent with economy to separate the offices of Magistrate and Judge, and to commit the former duties to younger men who have acquired sufficient experience as Assistants to Magistrates and Registers, but if by the establishment of

Punchayets

Punchayets and Native Juries, and the cognizance of summary suits by the Collectors, the duties of the Civil Courts were so much reduced, as might, I think, be contemplated; some of the causes of the Registers Courts might be transferred to the Native Commissioner, and the remainder to the Judges; the Judge might have a greater latitude in appeal and in original suits, and also be vested with a criminal jurisdiction, as intimated in the 167th Paragraph of the Honorable Court's Letter; the Registers might then become exclusively Magistrates. If such a plan be not feasible, and a change must take place, I am of opinion that the Collectors would be much more competent to perform the duties of Judge and Collector, than of Judge and Magistrate, and whilst there would be always an opening to appeal, I have not any idea that those duties would be found to clash—indeed a provision might be made against such an evil, by a rule, that revenue causes which had been decided by the Collector's in a summary suit, should on regular suit be specially tried by the Judge, or by the Court of Appeal.

(Signed) W. O. SALMON,

Revenue Board.

(A true Copy,)

(Signed) J. P. WARD,

Acting Secretary.

MR. C. BULLER,

I WAS not aware until within a few days, that the orders of the Court of Directors which were forwarded to us by Government, under date the 23d of August 1815, had not been answered, or that a second call had been made on the Board, under date the 4th September last, to furnish the reply. I can throw so little light on the subject myself, that I do not think it proper at this late period to detain the papers,

 particularly

particularly as Mr. Salmon has already drawn up his sentiments on the subject. I shall therefore content myself with offering such few remarks as immediately occur to me.

2.—The first circumstance principally connected with the Revenue authorities, is that paragraph of the Court of Directors letter, which refers to the injuries to which the Ryots are exposed, and to the inefficacy of the system in regard to the settlement of disputes respecting lands, boundaries of lands, crops, and water-courses. It is the deliberate opinion of the Honorable Court, that no arrangement for the purpose can proceed upon a right principle, nor operate satisfactorily in the fulfilment of it's aims, which has not a reference to the ancient and long established customs and institutions of the country, and which does not accommodate itself to the habits, the feelings, and understandings of those for whose benefit it is designed.

3.—It is impossible not to agree in the justice of the above observations; but the question with me is, whether we can find any traces of long established customs and institutions, under which the country formerly flourished, and to which the habits, feelings, and understanding of the people are accommodated. In Bengal, in which I have principally resided, I cannot help thinking that the old institutions, which I imagine the Honorable Court have in view, have long since fallen into disuse, and that it would be as difficult now to restore the old Hindoo system, as it will be to complete one of our own.

4.—The old Hindoo system, I consider to have been a kind of patriarchal government, under which the heads of families and heads of Villages, were the chief instruments of control. That a country will flourish greatly under such a system, is a fact, of which I have no doubt, but I have great doubts, of it's being compatible with many of our institutions, which I hope there is no idea of abandoning.

5.—Even where it is in it's fullest vigor on the coast, I cannot help apprehending that it will not be found as efficient, as it has heretofore been. From several remarks on the Ryotwarry system, it seems to me that the greatest advocates for that system, are not without their fears of it's being injured by the introduction of our Courts of Adawlut.

6.—However, I entirely approve of making use of every native institution from which benefit is likely to occur, and if veneration for Punchayets does exist, and if they can be employed to advantage, there can be no reason why our Judges and Collectors should not encourage them; Arbitration is admitted of and encouraged at present, our existing rules therefore are sufficient for that purpose, if an intelligent Judge or Magistrate should think it advantageous to have recourse to them.

7.—If experience should show that they can really be made efficient, rules may be hereafter framed for the establishment of them, but the general establishment of them by law, should in my opinion, be the result of a long previous employment of them by judicious Officers, who may find them useful, and not the result of any theory.

8.—With respect to the Honorable Court's proposition of assigning the Maal Adawluts to the Collectors, I cannot think there is any objection to it, at least not in Bengal. The Revenues are now collected so punctually, that there is not any fear that the Collector's fiscal duties, would at all interfere with his judicial ones, by biasing him in his decision on claims of this nature; where the settlement is not permanent, there may be objections on that score, but even in that case probably the advantages, greatly outweigh the disadvantages.

9.—Under the reforms that are now in progress in respect to the Canongoes and Putwarrjes, I conceive that a Collector must have very superior facilities for the adjustment of all kind of disputes cognizable

nizable in the Maal Adawlut, and if the above Offices be properly controled, they will tend more to prevent oppression and litigation, than any other rules which can be devised: I therefore entirely concur in the opinion expressed by the Court, relative to the propriety of giving the Maal Adawluts to the Collectors.

10.—With respect to placing the Police in the hands of the Collectors, I can see no reason why it should not be done, excepting what is assigned by the Collector of Mymensing, that the increased duties of the Collector from the Maal Adawlut, may not allow him as much leisure to attend to the Police, as what a Judge would have to dispose of. In the Lower Provinces therefore, it may be advisable to commence by assigning the Maal Adawlut to the Collectors, and afterwards if it be found convenient, the duty of Police may be assigned to them also.

11.—Whatever alterations may be made, they should I think be as gradual as possible. Nothing can be more injurious to a country than a frequent change of system.

12.—It must not escape attention, that if the Police should at any time be assigned to the Collectors, a considerable alteration must be made in the institution of the office. The office of Collector must be put upon a more respectable footing, than it is at present in Bengal.

13.—With respect to the Court's wishes to introduce in all practicable cases the principle of realizing the Revenues from the Ryots; I feel persuaded that there are not many Revenue Officers in Bengal, who would think it possible to introduce that system with advantage in the Lower Provinces; Khass settlements, which in point of fact is the Ryotwarry system, have uniformly failed in Bengal, under the very best Collectors we have had, and it is in my opinion, that we can never

never restore a state of things, which would admit of any chance of that system being successfully reverted to.

14.—Though I admit that this system may have formerly succeeded, and the country flourished under it, yet I am not at all persuaded that it is a state of things to which it would be desirable to revert In fact I consider it impossible to succeed under our institutions, for the impartial administration of justice. The power of the heads of families and the Chief of Villages, must be materially injured by our Courts of Adawlut, and unless they possess actual power and opinion too, it is impossible that the Village institution would be of sufficient weight to enable a Collector to control the complicated affairs of each Village.

15.—I think it a great misfortune that the Ryots in Bengal have any recollection left of the rights which formerly attached to them under the Hindoo Government, and which were in some degree continued after the introduction of the Musselman authority: those rights were I doubt not solid under the first Government, but they were worse than nominal for a long while before we came into Bengal, for though the Ryots still continued to possess their rights in theory, yet they were in fact at the mercy of the rapacious Aumils of the day, whose exactions were only limited by the means of the Ryots to contribute, and whose abuse of authority must have been greatly increased by the opposition it met with from the claims of the Ryots.

16.—At present they consider themselves to possess a right, and it is this ideal right, which has hitherto stood in their way of receiving Pottahs, and entering into engagements, which would have secured valuable rights to them. If they had no right at all, but were merely day labourers, I am satisfied they would not be subject to much loss, oppression, and that their conditions in life would be greatly improved.

17.—Although either our laws may be incomplete, or the execution of them imperfect, yet it is with great satisfaction that I have seen that it is the opinion of some of the best informed Gentlemen in India, that general security of person and property, is felt and acknowledged by the Native subjects,

18.—That we cannot protect every Ryot against the oppression of the Zemindar, or the Zemindars against the frauds of the Ryot, is not to be wondered at; it is not the law in England, which would alone protect the poor, from the means the rich possess of oppressing them. But it is to the general morals and sentiments of the people, that we are to look to, as the great safeguard against oppression there —Were the rich in England as prone to oppression, and as indifferent about reputation as the rich are here, I greatly doubt the adequacy of the law to protect the poor. That regard to character which the highest amongst us cannot lose sight of is the grand defence of the weak in England.

19.—Until the superior classes in this country are greatly changed, I do not expect any great improvement from change of system. Our laws at present when properly administered by an active, zealous, and intelligent Officer, are abundantly sufficient for securing the rights of individuals in any one Zillah. Whether we persist in our present system or have recourse to the Village establishments, and the Hindoo institution for settling disputes, almost every thing will depend upon the character of the Officers who are to superintend the business. That the influence of the heads of Villages is not always directed to the good of the Ryots, is I think fully established by some of Lord Teignmouth's minutes. I have not the papers to refer to, but I am sure I recollect that he exposes in very strong terms, the abuses and frauds committed by the Munduls and heads of Villages, who are the great guardians of the Ryotwarry system; I am inclined then to come to this conclusion, that the wisest laws which can possibly be

enacted

enacted will be insufficient, unless we are sure they will be administered with vigor and wisdom, and that is a matter which must depend upon the personal character of the executive Officer.

20.—Either the morals and manners of the people must restrain the hand of the oppressor or the law must be administered by an active and powerful hand or otherwise the subject will be oppressed.

21.—The moral sentiments are not a powerful check in this country, and our wish to introduce order and system in some degree ties up the hands of our best Officers. But still an active zealous Judge and Magistrate has the means of affording protection to the inhabitants, and in the mean time our systematic rule has been sufficient in the judgment of the most experienced officers to give an impression among the natives of general security of person and property.

22.—If justice be delayed, gross injustice at least seems to be pretty well guarded against, that therefore is a considerable step gained.

(Signed) C. BULLER,

Revenue Board,

(A true Copy,)

(Signed) J. P. WARD,

Acting Secretary.

To

C. M. RICKETTS, Esq.

Secretary to the Governor General.

Sir,

Dihlee Residency. Revenue Department.

I have the honor, in conformity to the orders of His Excellency the Governor General, to transmit a report on the state of the public Revenue in the Territory of Dihlee, with the addition of such suggestions as occur to me with a view to its improvement.

2.—The following is an account of the gross and net Revenue for a series of years, including Land Revenue, Customs, Duties on Spirits, and Miscellaneous Duties.

		Gross.		Nett
1807-8	....	5,78,392	....	3,89,602
1808-9	....	7,23,495	....	5,71,436
1809-10	....	10,69,763	....	9,06,582
1810-11	....	12,44,3[illegible]8	....	10,94,374
1811-12	....	11,82,814	....	10,15,477
1812-13	....	14,33,022	....	12,98,009
1813-14	....	16,46,289	....	14,74,255

3.—The following is an account of the Land Assessment for the same years:

1807-8	....	3,15,593
1808-9	....	4,81,389
1809-10	....	8,07,672
1810-11	....	8,60,884
1811-12	....	9,87,030
1812-13	....	10,39,560
1813-14	....	12,56,502

4.

4.—The increase in the Land Revenue above exhibited has been obtained partly by the acquisition of the Territory of Hurrecana and the Pergunnah of Hoodul and other less considerable acquisitions since the year 1807; and partly by an increase in the Revenue of the Lands under our management at that period, and also of those since acquired.

5.—The increase of Revenue, exclusive of acquisitions, is owing to the zealous services of Mr. William Fraser and the Honorable Mr Gardner, who have had the immediate charge of the Revenue Department since 1809, and to the operation of the beneficial system established by my predecessor Mr. Seton, which shall be particularly described in a subsequent part of this Report.

6.—The following is an account of the Customs for the same years.

1807-8	....	2,01,489
1808-9	....	1,89,731
1809-10	....	2,46,327
1810-11	....	2,55,166
1811-12	....	2,81,727
1812-13	....	2,97,736
1813-14	....	3,29,181

7.—This increase in the Customs, I believe to be chiefly owing to the increased vigilance introduced into this Department by Mr. William Fraser.

8.—This Department however appears to me to require reformation. I am not at present prepared to submit any plan for that purpose, but I propose to submit a separate report to Government on this subject hereafter. At present the Duties are the same that were collected under the native Governments with a few exceptions.

9.

9.—The following is an account of the Duties on Spirits, for the same years.

1807-8	....	25,618
1808-9	....	30,495
1809-10	....	22,744
1810-11	....	35,261
1811-12	....	39,510
1812-13	....	43,440
1813-14	....	36,100

10.—The decrease in the last year in the amount of the Duties on Spirits may be attributed, I conceive, to the following causes ; These Duties are farmed to the highest bidder, and have sometimes been farmed at too high a rate from the eagerness of rival bidders to obtain the farm. The farmer in 1812-13 suffered, and the next year the Revenue fell in consequence.

11.—A diminution in this branch of Revenue is not much to be regretted. There is no danger of a permanent or serious loss as long as people drink Spirituous Liquors ; and any decrease of Revenue proceeding from a diminution of consumption, would be a cause of joy rather than of regret.

12.—The following is an account of Miscellaneous Duties for the same years.

1807-8	....	22,129
1808-9	....	12,041
1809-10	....	6,530
1810-11	....	8,792
1811-12	....	9,938
1812-13	....	1,657
1813-14	....	2,122

13.

13.—The decrease in this branch of Revenue seems to have been caused partly by a decrease in the amount of collections at the Mint, proceeding from the diminution of the circulation of the Dihlee Rupee, and partly by the transfer of some items of Revenue from this head to others.

14.—We have no Stamp Duties in this Territory. I formerly recommended the introduction of them as an additional source of Revenue, but the suggestion was not approved by Government. No reasons however were assigned for the decision.

15.—If Stamp Duties are universally objectionable, they certainly ought not to be introduced into this Territory, but if they are elsewhere beneficial to the Government, there does not appear to be any sufficient reason for excluding them entirely from a particular district.

16.—Under certain local regulations and restrictions adapted to local peculiarities, the Stamp Duties might, I conceive, be introduced into this Territory with some benefit to the Revenue.

17.—I cannot refrain from taking advantage of this opportunity to bring again to the notice of his Excellency the Governor General the subject of the Dihlee Canal.

18.—This subject has engaged the attention of Government for many years, and all the information relating to it that can be furnished from this place, has already been submitted. The late Lieutenant Macartney's Survey, contains I believe the most complete information respecting the course and present state of the bed of the Canal, the practicability of re-opening it, and the probable expense of that undertaking.

19.—It is supposed that the produce of the Canal would in a very short time, repay the expence of bringing it into order, and it is cer-

tain

tain, that the restoration of this beneficial work would be productive of a great increase of Revenue to Government, and a great increase of comfort, wealth and health to the inhabitants of the Territory and city of Dihlee.

20.—The Canal of which I speak above is Alee Murdan's, which came from the Jumna, ran parallel with that river for about 150 miles, fertilizing the country in it's course and emptied itself again into the Jumna at Dihlee, refreshing the city with an abundant supply of sweet water, and distributing running streams through all it's principal streets and gardens.

21.—It would be premature for several reasons to recommend the immediate restoration of Furoze's Canal which watered Hureeana, but this may furnish a subject for future attention.

22.—A considerable increase of Revenue may be expected in this Territory, from the gradual falling in of the numerous and extensive Jageers with which it is filled.

23.—The accounts detailed above of the increasing progress of our Land Revenue in past years are far from unfavourable in appearance.

24.—With respect however to this branch of Revenue, by far the most considerable and most important of all, I should deceive the Governor General, if I were to represent the situation of the Landholders, from whom the Revenue is collected, as being exactly that in which I wish to see them.

25.—Much discontent prevails among them, which I attribute to the frequent recurrence of new settlements, attended by fresh demands for an increase of Revenue. This is an evil which is always likely to attend short settlements, and which is unfortunately increased by the dutiful zeal of public officers to obtain the full dues of Government at every Settlement.

26.—Mr. Seton introduced the system of Village settlements; and the first settlements made by an European Officer, were made by me, under Mr. Seton's Instructions, when I was his assistant.

27.—The first was a settlement for one year, and was made with some difficulty, owing to the reluctance of one part of the people to become responsible for the payment of money Rents, and of another part to pay any Revenue whatever. The second settlement was for three years, and was made with greater ease.

28.—These settlements were made purposely light, in order to conciliate and encourage the cultivators, and the full due of Government was not exacted, on the principle, that it was good policy to sacrifice a part for the future benefit both of the Cultivators and the Government.

29.—The settlements in every instance in which it was practicable, were made with the Villages represented by the Head-men. Where it was found impossible to persuade the Village Land-holders to enter into engagements, the Villages were given in Lease to Farmers.

30.—Subsequently to that period various settlements have been made in the several districts of this Territory for two, three, four and five years.

31.—In these latter settlements greater attention has been paid to the rights of Government, and the Revenue has been considerably increased. But the continued increase has dissatisfied the Land-holders, and either from conceiving the amount latterly demanded to be excessive or from a desire to evade the payment of the rent due to Government, the Land-holders have of late in many instances declined the settlements proposed.

32.—When this has been the case, recourse has been had to the system of levying the rent of Government by taking it's share of every crop, either in kind or in a money valuation.

33.—I regret the necessity of these measures, both because I am apprehensive of immediate injury from them and because they are destructive of the system which I have at heart, and neither tend in my opinion to the benefit of Government, nor to that of the cultivators. It is my present wish and intention to establish such a system as shall prevent the recurrence of the same necessity.

34—This may be effected I conceive by long settlements on moderate terms, in the manner explained in a subsequent part of this report.

35.—In proposing the establishment of a system for the future management of the Land Revenue in this Territory, two objects must be held in view, the prosperity of the people and the realization of the Revenue.

36 —It is desirable in the first place to take a view of all the systems, which might be adopted, and to consider their respective advantages and disadvantages.

37.—But previously it is proper to discuss certain points, on which it is necessary to come to an understanding, before we can form a judgment on the relative advantage of divers systems.

38.—The most important of all questions is, where is the proprietary right of the land vested ? Is it with the Government, or with the actual occupants and cultivators, or with any third party?

39.—In this Territory there is generally no third party to claim it and it either rests with the Government or with the actual occupants.

40.—The claim between these two is I believe disputed by able writers on both sides of the question.

41.—One party undertakes to prove that the Sovereign is the proprietor of all the lands under all Asiatic Monarchies.

42.—Another party with equal confidence engages to shew, that the sacred rights of private property in the land existed generally and in full force in former times.

43.—The principal argument in favor of the former position seems to be, that the portion of the produce of the land, which is admitted to be the share of the Government, far exceeds the amount that could be taken as a Government Revenue, Duty or Tax, and must be considered to be the Rent paid to the proprietor, being equal to the whole rent of the Land, whereas the Revenue drawn by a Sovereign not the proprietor of the land would be only a part of the rent.

44.—The share of the Government in this Territory is one half of the gross produce which is rather excessive, even if it be considered as rent, and which as a Duty or Tax would be enormous. Therefore, if the receipt of rents constitute proprietary right, it is difficult to deny, that the Government must be the acknowledged proprietor of the land.

45.—But this right, on the part of the Government, need not interfere with what may be termed the possessory right of the village Zumeendars or actual possessors of the land, respecting which some observations will be submitted in detail in a subsequent part of this report. For the present let it be supposed that the Government has a right to the rents, and the Land-holders a right to the possession of the land.

46.—To obviate any objection which may be raised against a property composed of possession without rent, it is necessary to observe, that the Land-holders alluded to are the actual cultivators, who support themselves by the produce of the land after deducting the rent or revenue paid to the Government.

47.—These Land-holders are the Zumeendars, the hereditary possessors and cultivators of the land. For distinction sake they may be called

called village Zemeendars to distinguish them from the great Zemeendars, in Bengal and elsewhere, who have large districts under their management.

48.—In the discussions which preceded and followed the permanent settlement of the provinces of Bengal, Behar, &c. the rights of these great Zemeendars to property in the soil were disputed. By one party, in that discussion they were represented as Officers of Government, by another as proprietors of land.

49.—It is not necessary now to enter into any discussion on that question, but it is necessary to state, that the village zemeendars, whose interests will be advocated in the subsequent parts of this report, are not of the same description with those great Zemeendars, on whom proprietary rights were conferred in Bengal, &c. by our Government.

50.—Those great Zemeendars had in many instances each an hundred or a thousand villages under their individual management. Of those who are herein termed village Zemeendars, there are a hundred or a thousand to each village. The former were gentlemen, noblemen, or princes, who lived in palaces in luxury and idleness. The latter are husbandmen, who live in mud hovels and follow the plough.

51.—How characters so opposite obtained the same denomination evidently of Mehomedan origin, it is not herein necessary to enquire. My object at present is to remark on their difference.

52.—The Zemeendars, of whom I speak, answer to the description of persons elsewhere denominated Ryyuts, but according to my idea of the latter term, it has two significations, one of a general nature, applicable to the lower order of subjects, the other applicable peculiarly to that portion of the inhabitants of a village, who have no pretensions to property in the land, but cultivate in the lands of others.

For instance, if the inhabitants of a foreign country, were to emigrate into the Dilhee territory, and settle in some of our villages, they would be Ryyuts, until by purchase, or some other transfer, they might become possessors of land, when they would be Zemeendars. By Zemeendars I understand, that portion of the inhabitants of a village, who have acknowledged property in the land.

53.—I beg pardon for being so tedious in these preliminary explanations. They are not however unnecessary, for on this subject, unless the reader and the writer come to an understanding with regard to terms, the latter will be unintelligible to the former.— Especially with regard to the term Zemeendar, it is necessary to explain what is meant; because many differences have heretofore taken place with respect to that appellation, which is even now used indiscriminately by characters of very different descriptions.

54.—In advocating the claims of the village Zemeendars, I consider myself to be, for the most part, on the same side of the question with those, who argue in favor of the claims of Ryyuts.—

55.—I now proceed to state the several modes of collecting the Revenue which might be adopted in this territory.—

1.—The Revenue might be raised by a division of the crops between the Government and the cultivators.

2.—Or by levying established pecuniary assessments on the quality of land cultivated, according to the species of crop grown, and the state of the harvest.

3.—Or by annual settlements with the Zemeendars made at the commencement of the year.

4.—Or by annual settlements with the Zemeendars made in the course of the year, when the state of the produce is ascertained.

5.—Or by triennial settlements with the Zemeendars.

6.—Or by settlements with the Zemeendars for longer periods.

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7.—Or by permanent settlements with the Zemeendars.

8.—Or by settlements temporary or permanent with Teekadars or farmers not the Zemeendars.

9.—Or by settlements temporary or permanent with new proprietors created by Government.

56.—The first mode, that of collecting by a division of the crops, is practised generally in those countries, which appear to be the best managed of any in India. I mean those petty states under hereditary Rajas, who understand the management of lands in detail, or are connected by cast, blood, and marriage with their Zemeendars, and live amongst them like fathers in their families.

57—By this system, equitably carried into execution, the cultivators cannot be intolerably oppressed whether grain be cheap or dear, whether the harvest be productive or scanty. The cultivator gets the half of his cultivation. He has no risk, no responsibility, no loss, except what depends on the season. The secure possession of his share of the crop is sufficient encouragement for him to cultivate again the next year.

58.—But this system however practicable in the hands of the petty Rajas in the limited states before described, would not answer in our extensive districts, under the management of our public Officers.—The establishments requisite would be so large, the frauds so numerous, the nominal controul of the collector so inefficient, and his knowledge in general so inadequate, that injury would be the most probable consequence, both to the people and to the Revenue.

59.—Moreover under this system it is impossible for the body of Zemeendars to rise above their present state. They must remain as they are and their situation can never be improved.

60.—It is not necessary to argue much against this system, for it has never, I believe, been thought of by Government, as one which ought

ought to be generally pursued. The most remarkable circumstance attending it is, that it should be so successful when it is properly managed, and so just it is considered that the Zemeendars are always anxious to have recourse to it, when difficulties arise.

61.—The system of levying a pecuniary assessment on the land and crop, according to the quantity and quality, is only preferable to the system of a division in kind, in as much as it is a more summary mode of collecting for the Government. It is not so beneficial for the cultivator. It does not give him the security which he derives from the other system. He is more liable to oppression, and with this most objectionable disadvantage, are joined the evils, before alluded to, of minute but inefficient interference tending to annoy and discourage the cultivators, without producing any counterpoising advantage. The Zemeendars are kept down to their present level as much by this system as by the former one.

62.—Annual settlements with the Zemeendars at the commencement of the year, enable the Zemeendars to make something by their industry, if the seasons be favorable. But then they are subject to loss if the seasons fail, if grain be cheap or if the settlement be heavy.

63.—In annual settlements made in the course of the year, when the state of the season and crop is ascertained, there is less chance of gain to the Zemeendars, and less chance of loss.

64.—Both these systems however, appear to me to be objectionable, as they prevent improvement in the condition of the Zemeendars.

65.—Triennial settlements afford some encouragement to the cultivators, but not sufficient. The demand for encreased rent comes too quickly on them, before they have sufficiently enjoyed the fruits of their industry, and one hard settlement, robs them of all the little profit they may have gained in several foregoing easy ones.

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66.—On the subject of settlements with the Zemeendars for longer periods, I shall offer my sentiments in detail in another part of this paper, as this is the system which I would most strongly recommend for adoption.

67—.The objections of permanent settlements with the Zemeendars are, that no increase of revenue can take place at any future period, that the advantages of the settlements must be unequally distributed, and that the system cannot be changed if it should prove to be erroneous.

68.—In every other respect permanent settlements with the Zemeendars would accomplish in the greatest perfection, the advantages which are held in view in recommending long settlements.

69.—Periodical settlements with the Teekadars or farmers, who have no original connection with the soil, appear to me to be the worst of all settlements.

70.—They introduce persons to share in the produce of the soil, who have no original right or interest in it, and whose profit must detract from that of the Government or that of the cultivator.

71.—The Teekadar having no hold on the soil, always expects to be out bid at the next settlement, and therefore temporary profit is his sole object.

72.—Where the Teekadaree system prevails, Lands are generally let to the highest bidder, under the supposition, that no man will bid more than the lease is worth, but experience in other countries, as well as this, shews that the spirit of bidding and the determination to obtain a lease will frequently induce people to make proposals far beyond the value of the lease, and where this has been the case, the Teekadar so far from laying out money for the improvement of the Lands, endeavours

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to redeem his loss by exacting hard terms from the cultivators. Both the Zemeendars and the Teekadars are injured, and cultivation instead of increasing, is thrown back.

73.—It is proper to explain what sort of people are understood by the term Teekadar. Those who carry on that profession at Dihlee are adventurers without property who catch at every chance of making a little money, and take leases for lands on a mere speculation.

74.—From such adventurers no benefit is likely to accrue to the land or the cultivators. Their business is to pay the Revenue for which they have contracted to the Government, and to take as much as they can from the cultivators.

75.—Such is the case with Teekadars in periodical settlements. The case would probably be different in permanent settlements with Teekadars, but then the greatest injustice would be done by giving them permanent possession of the lands of the Zemeendars.

76.—The same injustice would be done by establishing new proprietors, created by Government, not the original Zemeendars, without, as I shall endeavour to shew, any advantage that might not be obtained by making settlements with the Zemeendars.

77.—If we suppose the right of property in the land in this Country to be divided; the Government to be entitled to the rent of the proprietor, and the cultivator to have the right of possession and use, the interests of both parties may be reconciled, and each may enjoy its own rights without detriment to those of the other.

78.—The Government does not require the possession of the land, but feels the necessity of its being occupied by industrious cultivators. The cultivator acknowledges the propriety of paying the rent to Government, and is satisfied with possession of the Lands.

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79.—If Government be disposed to grant long leases or settlements to the cultivator, the latter will immediately, and Government also will eventually reap the benefit of this liberal policy.

80.—If Government relinquish in favor of the cultivator, the right which it possesses to the half of the produce and receive in exchange certain rents on long leases, whatever gain accrue to the cultivator, promotes the happiness and prosperity of the bulk of our subjects.

81 —On the other hand, if the full share of Government be exacted at every harvest, though this mode seems to be abundantly objectionable, yet it has at least this advantage, that whatever is taken from the cultivators, comes, where it is due, to the Government.

82.—Under any system which admits of a third party, by whatever name between the Government and the cultivator, neither does what is ceded by Government go to increase the prosperity of the cultivator, who in that case remains stationary, paying the rent of Government to a person invested with its rights, and disposed rigidly to exact them, nor does what is taken from the cultivator, tend to add to the resources of Government; the surplus above a certain payment being swallowed up by the intervening party, without benefiting either the cultivator or the Government.

83.—The permanent settlement established in Bengal, has been objected to, on the ground, that by erecting a new order of great land proprietors that never existed before, we actually robbed millions of established hereditary property which had been possessed by their ancestors, not only for centuries, but for thousands of years.

84.—Of the justice of the objection as applied to Bengal &c. I am not competent to judge, but the injustice which is above described, would really take place in the Dihlee Territory, if it were parcelled out in large estates, and consigned in property to a few great land proprietors of our own creation.

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85.—The system which it is proposed to recommend may next be considered in some detail, and the objections to other systems that have been concisely stated above, will be elucidated in the course of the enquiry.

86.—It has already been mentioned that a system of settlements with the Zemeendars for long periods, is that which it is herein proposed to recommend.

87—To which may be added that it would be advisable to secure the Zemeendars in the enjoyment of rights and privileges of proprietors as far as can be done without entirely relinquishing the rights of Government.

88.—This suggestion is founded on the suppositions, that to confirm or confer (which ever it may be termed) proprietary right in the soil, is the surest mode of promoting the prosperity of the country, and of course, the interests of the Government, and that the village Zemeendars are the persons who ought to possess that right.

89.—The first of these suppositions will probably be generally admitted without the necessity of attempting to prove it. The latter it may be necessary to explain.

90.—Admitting that the Government has the property of the soil, the question is, as the Government cannot occupy the land, and as the land requires resident proprietors—Who are the people that next to the Government may be considered to have the best right?

91.—It is here that the paramount claim of the village Zemeendars may be justly, and it is to be hoped indisputably contended for.

92.—What men can have greater rights than those whose ancestors have occupied the same lands and habitations from time immemorial? who live on the soil entirely, and cultivate it at their own expence, and

and by their own labour, who receive it by hereditary succession or by purchase, who leave it to their children, or if reduced to necessity sell it, or mortgage it, or if they chuse to transfer it by gift during their lives.

93.—These rights are experienced by the Zemeendars and have been exercised for centuries. If they be not sufficient to constitute undoubted property, they are surely sufficient to confer a paramount claim.

94.—Let it be supposed that these rights were authoritatively made to cease, and that another person were vested with proprietary right over the land to sell or otherwise dispose of it, at his sole pleasure, would it not be a great cruelty and injustice towards the Zemeendars.

95.—No other person could exercise a perfect proprietary right without the total destruction of the rights hitherto enjoyed by the Zemeendars. But with what pretence of justice could these rights be destroyed.

96.—It is to be apprehended that they have been destroyed in some parts of our territory by the creation of new rights in others, but it is not my intention to discuss what may have been done on other occasions, though I conceive it to be my duty to advocate the rights of the village Zemeendars in the territory under my superintendence.

97.—Notwithstanding the numerous revolutions which have taken place in this part of India, the rights of the village Zemeendars have generally been held sacred; more sacred it seems to me than any other property, and though numerous sorts of oppression have been devised, it does not appear that any oppressor generally speaking, has presumed to meddle with these rights.

98.—It is probable that expediency has operated to secure them, as much at the least as justice, but be the cause what it may, it ap-

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pears to me, that the most clear and most distinct rights held in this part of India, are those of the village Zemeendars.

99.—To shew the value set on these rights and the respectable estimation in which they are held, I may mention that Koor Raj Singh, great uncle of the Raja of Bulumgurh, and sole manager of all the Bulumgurh Lands, pointed out to me once, as I was riding with him, a single small village in the Territory under his management, of which he boasted, with evident exultation, that he was the Zemeendar, having purchased the Zemeendaree from the original Zemeendars.

100.—What made it of consequence to him to purchase this petty Zemeendaree of a single village—or why did he exult at this acquired right? Why, he knew that the Raj of Bulumgurh would descend to a distinct branch of the family, his Regency would in due time expire, the family might be degraded from its high rank in some future revolution its territories might be seized, its Raj might be lost, but he flattered himself confidently, that under any circumstances this Zemeendaree purchased with his own money, would descend as a perpetual right to his family untouched and undisturbed by any future Governor or Government.

101.—It must seem strange to the inhabitants of India, who do so much respect these Zemeendaree Rights, that the British Government which professes to consult justice in all its actions, should apparently undervalue rights, which have been respected by the most despotic and the most lawless Governments.

102 —Arrangements occasionally take place which appear to imply, either a misconception, or a neglect of the rights of village Zemeendars.

103.—There is frequently a disposition shewn to establish the proprietary right of others to the exclusion of village Zemeendars,

104. – It was once proposed on the part of Govérnment to make maliks of the villageMokuddums—in other words to convert those who are deputies from the body of Land-holders for the management of the concerns of the village, into absolute proprietors of all the lands of the whole village, to the entire exclusion and extinction of the rights of the great body of their constituents, the village Land-holders, which would be similar to making over, in absolute property to the individuals composing the Court of Directors of the East India Company, all the stock belonging to the Proprietors of the said Company; or to making a member of the House of Commons sole proprietor of all the lands in the county which returns him to Parliament.

105 —The sale of lands for arrears of Revenue, is a common instance of the little consideration in which the Zemeendarce rights are held by Government. For trifling arrears of Revenue which might be realized in subsequent years, the hereditary rights of families, which have existed for centuries are annihilated, a new right of absolute property established in favor of other persons, purchasers of the Proprietary right at Public Auction, by which purchase the original proprietors or Zemeendars must either become the labourers of the new proprietor or quit their country and home for ever.

106.—The custom of selling lands for arrears of Revenue has not yet found its way into this district and I trust that it never may be introduced. I hope and believe that it will never be necessary. – Except in extreme cases, such as actual rebellion on the part of all the Zemeendars whose property is to be sold, – it appears to be harsh and cruel, and is certainly unpopular and disgusting, and a cause of permanent reproach to our Government.

107.—If the rights of the Zemeendars be acknowledged to the extent in which they have heretofore enjoyed those rights, it will readily follow,

follow, that they are the rightful claimants for the possession of any proprietary right that the Government may deem it expedient or just to acknowledge in its subjects, and the policy of confirming their present rights, and granting them more than they at present are entitled to, will consequently be admitted.

108.—The present rights of the village Zemeendars appear to be the possessory property of the land, but the Revenue or Rent due from the Land is payable either directly to the Government Collector, or to a Jagheerdar, Istemrardar, Teekadar or any other intermediate person to whom the Revenue or Rents of the Lands may have been assigned.

109.—The additional right which it seems desirable to confer on the Zemeendars, is that of paying the Revenue in all cases in which it is possible directly to Government, to the exclusion of such persons as those above named, in order that the profits of cultivation may always accrue to those who are equally the hereditary possessors and the actual cultivators of the land, and not those who have no original or hereditary interest in the land, and who cannot cultivate except by the hands of the Zemeendars.—

110.—The sacred hereditary and transferable right of possession of the cultivators is admitted by some of the warmest advocates for the proprietary right of the Government.—

111—It is remarkable that these are not the greatest enemies of the Village Zemeendars under the denomination of Ryots, or perpetual tenants of the Crown.

112—The greatest enemies of the Village Zemeendars are those writers, who wishing to advocate the rights of private property applied English ideas and systems to India, classed the cultivators of India, the poor but lawful hereditary possessors of the land with the labourers

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of England and consigned their lands in absolute property to rich individuals because the latter seemed calculated to figure in the scheme for the settlement of India, in the place of the great land proprietors of England.

113 —Whether the proprietary right of the Government be affirmed or denied, the actual rights of the villagers seem to be unassailable. If it be affirmed, the ablest advocates for the proprietary right of the Government nevertheless admit the possessory right of the cultivators as perpetual tenants. If the proprietary right of the Government be denied or ceded, where can that right so reasonably rest as with the hereditary possessors and cultivators of the land."

114.—The right of transferring their land is an acknowledged part of the possessory right of the village Land-holders, and the confirmed exercise of this right is essential to secure the benefits anticipated from the operation of the system recommended in this report. One of the greatest sweets of the good use of property is, the power of acquiring more. The ability to purchase would be a great incitement to industry, under a system which, by securing to every man the enjoyment and use of his land, would make the possession of it a source of consequence as well as profit.

115.—The consequence and profit arising from this source are within the recollection of the inhabitants of this territory, and prevailed to certain extent before the establishment of our Government. It is remarkable, that it was our Government that destroyed them; but from causes which made it almost necessary to do so.

116.—The Governments which preceded us were too weak to extort from the people the full dues of Government; and in many parts of this Territory the Zemeendars cultivated chiefly, if not solely for their own benefit. The principal Land-holders became men of consequence, and men of wealth.

117.—It was not till after several years from our conquest that the Zemeendars of parts of this territory were thoroughly brought under Government. This was effected during Mr. Seton's Residency by the measures of mingled mildness and firmness which he directed. Still instances occur of the breaking out of that independent and refractory spirit, which was cherished by the weakness of former Governments.

118.—Since the establishment of our Government over the Zemeendars, our encreasing settlements, and our power to enforce the payment of the just dues of Government, have completely destroyed the consequence of the principal Land-holders, and impoverished all those who were formerly able to oppose the Government.

119.—The introduction of our Government has consequently been disadvantageous to these people, and it is not to be wondered at that those of this description are generally discontented and disaffected.

120.—It is however in the power of Government to reverse the case and to confer on these Zemeendars rights, privileges, consequence and wealth such as they never knew before.

121.—Their former wealth and consequence were precarious and devoid of security. Though they successfully resisted the weak local Government, they had always the apprehension that a powerful army might be sent to plunder them, and this occasionally occurred. They knew also that the Government, if it could ever subdue them, even for a short period, would take advantage of the opportunity to fleece them.

122.—The natural consequence of this state of insecurity was, that money was spent as soon as acquired. Hence a spirit of extravagance arose, which still exists, and which it may require some time to remove.

123. In exchange for this insecurity it is in the power of Government to confer security instead of wealth, lawlessly acquired by opposition to the Government, and hastily spent to avoid plunder; we may confer the power of acquiring solid legitimate and lasting wealth which shall be cherished, applauded, and upheld by the Government, which shall be a source of consequence in the eyes of the people, and of flattering distinction on the part of the rulers.

124.—Then instead of dissatisfied and disaffected Land-holders, truly complaining that we have injured them by diminishing their consequence and their profits, we may expect to have Land-holders, bound to us by the strongest ties of self interest, and acknowledging from irresistible conviction the incomparable benefits of our rule.

125.—I now proceed to describe the nature of the settlements, which I would propose to have concluded with the village Zemeendars.

126.—Every village is inhabited wholly or partially, by Zemeendars or possessory Proprietors of the Land. These are the persons with whom the settlement ought to be made, but as the number of them is generally too great for the transaction of business, a certain number of Mokuddums or head men, being in general the men of the greatest property and influence in the village, act on the part of the village, agree to terms, sign engagements and transact negociations. The village is bound by their acts.—.

127.—The Mokuddums having concluded the settlement with the Officers of Government, are charged with the duty of collecting the Revenue in the village.

128.—The collections in the village may be made in two ways.

129.—One is in the mode termed Bautch, which is a proportionate assessment

assessment on the Lands of several Zemeendars, with reference to the amount of the whole Revenue to be paid. Where this mode of Bautch prevails the Mokuddums have a claim to an allowance for their trouble in collecting, which allowance is termed Mokuddumee. It may either be paid by Government, and thus form a deduction from the Revenue, or by the village, and thus form an increase to the Assessment.

130.—Another mode is by Butaee, that is, the Mokuddums collect the Government share of the produce in kind from the Zemeendars and Ryyuts. When this arrangement is practised, the Mokuddums in fact become farmers. The profit is their's and the loss ought to be their's also ; they are supposed to profit and the labour which they undertake being for their own advantage, they are not entitled to any other remuneration.

131 —It is generally observable, that where the system of Bautch prevails the constitution of the village is democratic, and the division of property is nearly equal. Where the other practice is customary, the village may be said to be governed by an oligarchy, and all the land or all the influence is in the hands of few.

132.—In future settlements it would appear to be advisable to pursue the same plan with regard to the internal administration of the village that has hitherto been followed, and after fixing the assessment of a village, to let the collections be made according to the local rules and customs, without however precluding improvement and amendment when these be practicable.

133.—Thus though it seems to be preferable, that settlements should at present be made with villages represented by their Mokuddums, the time may come when it will be preferable to make settlements with individual Zemeendars, on account of the Revenue or

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Rent of the Land actually in their possession. It may be expected that the desire for these separate settlements will arise in the minds of the Zemeendars, when their property, their security, and their consequence shall be gradually increasing.

134.—Settlements should be made with villages for periods of ten, twenty, thirty, forty, fifty, or a hundred years; the longer perhaps the better. At all events the periods should be sufficiently long to admit of considerable profit being made by the cultivators from their own labour and enterprize.

135.—This is the very essence of the system proposed. If the principal object were to extort rigidly the right of Government, on every acre of cultivation, it is possible, that by able and considerate management on that system, a greater revenue might be realized for some time to come; but then the slightest excess in so delicate a system would be productive of ruinous consequences, and under the most favorable circumstances the situation of the cultivators would remain as it is at present without rise or improvement.

136.—There would not in that case, be a sufficient incitement to labour for self advantage, as half of the produce must go to Government. Men would be apt to satisfy themselves with cultivating sufficient for the subsistence of themselves and families. To incur any expense or any risk with a view to future profit would be out of the question; as half of the produce would go to the Government, while all the expense and risk would be on the side of the cultivator.

137.—This is doubtless the cause of the stationary character of the cultivators of Hindostan. As far as we can judge, they appear to be the same as they were, centuries ago. The half of the produce of their labour has been the right of Government, and they have not had a sufficient hope of profit, nor a sufficient security of property, to induce them to exert themselves to improve their condition.

138.—This also appears to be the cause, why the permanent settlement of Bengal has produced so little or rather no alteration in the character of the mass of the people. We did not acknowledge any proprietary right in the actual cultivators composing the body of the people. We did not make a permanent settlement with them for the Revenue or Rent of the Lands occupied and cultivated by them; but we created according to one creed, or confirmed according to another, a number of great Land Proprietors, and established their proprietary rights over whole districts, some of vast extent. The consequence was that the situation of the cultivators was not by any means improved. The share of the produce of their labour which belonged to the Government as Revenue or rent became due to the proprietor with whom the permanent settlement was concluded; and to whom their lands, justly or unjustly, were assigned in perpetuity. This proprietor will in all probability always consult his own immediate interest by collecting his rents from the cultivators according to the full intent of his rights. He will not make a sacrifice of temporary gain with a view to their future prosperity. He will take care to secure to himself the profits of their labour. And in consequence the state of the great body of cultivators of Bengal will probably remain stationary to the end of time; or till the birth of some Revolution with which time may be pregnant.

139.—The system herein proposed, of giving to the cultivators greater security of property in their Lands and encouragement to labour for their own exclusive benefit, would doubtless in the course of time produce a great change in the character of the agricultural class of our subjects.

140.—It does not seem to be difficult to foresee some of the effects which must take place at no distant period from allowing the cultivator to reap the exclusive benefit of his own labour during a long settlement or lease.

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141.—It may be anticipated that they would shew themselves, both in the increase of cultivation, and in the superior quality of the produce. The person who before cultivated one field, which sufficed to support his family, and enabled him to pay the Revenue of Government, would cultivate more, according to the extent of his land and his means. He whose Land was already filled with cultivation would set about increasing the produce, both by saving more valuable crops, and by improving the soil. Then would follow the study and the practice of the best modes of improving the value of Land. The person who had only one plough would contrive to procure several. He who before had only cultivated a little Bajra or Jowar or other coarse grain in the raining season, trusting to the rain of heaven for his annual harvest, would make a well and secure a good crop of wheat or sugar cane, or tobacco or other produce yielding a rich return.

142.—At the expiration of the period of the settlement or lease, the village would be able to afford an increase of Revenue, and the cultivators would set out again on a new-settlement with fresh vigor and enterprize.

143.—The increase of wealth joined to the security of property would in some instances, lead to amassing, while in others the acquisition of money would lead to a profuse expenditure. The wealth amassed by one would probably be dissipated by his descendants. The value of Land however and Landed Property would increase. Numerous transfers would take place. Prudence would be rewarded by increase of property. Extravagance would suffer, but would at the same time encourage the industry of others.

144.—The love of comfort would increase with the acquisition of wealth. A greater demand would prevail for the manufactures and

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the productions of the arts. The Revenue of the Government and the wealth of its subjects would alike be promoted by the process.

145.—From the security of property and consequent independence, would arise much variety in character and situation. Each village would become a country town, and would have its substantial Land Proprietors, its cultivating labourers, its farmers and tenants, its mechanics, its tradesmen, all following their respective professions, according to the division of labour, which self-interest and the increasing demand for all articles of comfort and luxury would suggest.

146.– Another effect to be expected from this system of settlements is a considerable increase of the number of our subjects by emigration from foreign countries. Our Zemeendars for their own interest would entice numbers to come and settle in their villages. The new comers would be the tenants of the village Zemeendars, and would enrich the latter and support themselves at the same time, and eventually might acquire property in the village, of which their descendants would become established inhabitants, and resident Land-holders.

147.—It is proper to consider what would be the effect of such a system on the attachment of our subjects. It is evident that we do not at present possess their hearty affections. There is no reason why we should. There is necessarily a wide separation between them and us, arising out of our being foreigners and conquerors, and the difference in colour, country, religion, language, dress, manners, habits, tastes and ideas.

148.—This is a natural obstacle which we have to get over before we can win their affections. And the only mode of getting over it is, by conferring on them benefits, which they must feel and acknowledge, every day, and every hour.

149.

149.—Hitherto our Government has not conferred any such benefit on the mass of our subjects, that is to say, the cultivating inhabitants of our Villages. The permanent settlement has kept them down in Bengal and ensured their permanent depression.—No system has yet been adopted in the Upper Provinces calculated sufficiently to secure for them any permanent advantages.

150.—We should deceive ourselves if we were to suppose, that the system of justice, which we have introduced, is acknowledged to be such a blessing as we conceive it to be. That it performs considerable good there can be no doubt, but like most human institutions, it has it's attendant evils. These are felt more than it's benefits, and our Courts of Justice are generally spoken of with disgust, with ridicule or with fear; but seldom, if ever, with cordial approbation and respect.

151.—It is remarkable that the natives discriminate between the character of British Functionaries, and that of our Courts of Justice. While they abuse the latter as scenes of injustice and corruption, where nothing is to be obtained but by bribery, and where Plaintiff and Defendant are alike plundered by Native Officers and Native Attornies, they seem to acquit the British Judge of any share in the nefarious practices which they attribute to his Court; and constantly appeal to the individual Justice of the Judge against the decree which they suppose to have been put into his mouth by the corrupt Officers of his Court.

152.—Any discussion regarding the Courts of Justice would be foreign to the subject of this Report. The preceding observations have been introduced merely to elucidate the remark which was previously made, stating, that our rule had not yet conferred any such benefit on our subjects, as being acknowledged by them from con-

viction, can form a ground of strong attachment, sufficient to overcome the obstacles imposed by original differences.

153.—But if the effects which have been anticipated, be the result of the system of village settlements proposed, we shall then certainly have a claim on the affection of that numerous class of our subjects, the Village Land-holders.

154.—They will compare their own situation with that of the cultivators living under other Governments, they will acknowledge that we have conferred on them unrivalled advantages; they will feel that their interests are identified with ours : and if once this feeling be established, the consequent advantages would be immense Instead of requiring as at present, troops to controul our villagers, we might depend on the latter, for the defence of the Country against foreign enemies, and the support of the Government in any case of internal disturbance.

155.—It is perhaps impossible to foresee all the remote effects of such a system, and there may be those, who would argue, that it is injudicious to establish a system, which by exciting a free and independant character, may possibly lead at a future period to dangerous consequences.

156 —There does not appear to be sufficient reason to apprehend any evil consequences, even at a remote period from the introduction of this system. It rather seems, that the establishment of such advantages for the bulk of our subjects ought to attach them to the Government which confers the benefit.

157.—But even supposing the remote possibility of the evil consequences which may be apprehended, that would not be a sufficient reason for withholding any advantages from our subjects.

158.

158.—Similar objections have been urged against our attempting to promote the education of our native subjects, but how unworthy it would be of a liberal Government to give weight to such objections.

159.—The world is governed by an irresistible power, which giveth and taketh away dominion, and vain would be the impotent prudence of man against the operations of it's almighty influence. All that rulers can do is to merit Dominion by promoting the happiness of those under them.

160 —If we perform our duty in this respect, the gratitude of India and the admiration of the world will accompany our name through all ages, whatever may be the revolutions of Futurity; but if we withhold blessings from our subjects, from a selfish apprehension of possible danger at a remote period, we shall not deserve to keep our dominion, we shall merit that reverse which time has possibly in store for us, and shall fall with the mingled hatred and contempt, hisses and execrations of mankind.

161.—These remarks are offered in reply to objections, which may be, and have been urged against our conferring on our Indian subjects, the blessings of Independence and Education. My own opinion is, that the more blessings we confer on them the better hold we shall have on their affections; and in consequence the greater strength and duration to our Empire—It is for the wisdom of Government to decide whether this expectation is visionary or founded on reason.

162.—The objects in view in the system of settlements proposed, are the universal improvement of the condition of our agricultural subjects, and the consequent increase of our Revenue at a future period to an incalculable amount.

163. It does not appear that the same objects can be gained by any other means. The mass of our subjects, that is, the body of cultivators, must be kept in a state of depression by every other system.

164.—Whether we follow the scheme of a permanent settlement established in Bengal, and sacrifice the interests of millions of the inhabitants of villages for the purpose of establishing the supposed rights of a few individuals as great Land Proprietors. Whether we farm out the Lands to Teekadars or endeavour to make the most of the Revenue by exacting our share of the produce of every Acre of Land. In every mode the cultivator must remain ad infinitum in the same state of poverty and depression in which he is at present. The advantage of a comparatively insignificant number of individuals would be consulted, but the interests of the body of our subjects would be sacrificed.

165.—It may be observed and with justice, that the prosperity of the cultivators would be most completely effected by a permanent settlement with villagers.

166.—There appear however to be objections to a permanent settlement.

167.—It would be perhaps an unnecessary sacrifice of the rights of Government, the proprietary right to be with the Government, this is better kept in view by periodical settlements, than by a permanent one.

168.—A permanent settlement would exclude the possibility of any future increase in the Land Revenue, and whatever increase might take place in the value of the produce of land, Government could not derive any advantage from it in the way of direct Revenue or Rent.

169.—A change may hereafter take place in the value of money in this country as it has in some countries of Europe, and especially

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in the British Empire. If this change were to take place in this country, the amount which might now be fixed as the proper Revenue of Governmen der a permanent settlement, might prove hereafter to be very inadequate with reference to the future value of money.

170.—Another disadvantage of a permanent settlement is, that if the system on which it may be concluded should prove to be erroneous, and what human institutions are secure against error, it would nevertheless be irrevocable.

171.—As the permanent settlement in Bengal,&c. which is described by some as having destroyed the just rights of millions in order to create unheard of rights for a few, has to this day numerous admirers, and is spoken of with rapture by some of the first statesmen in the Imperial Parliament, it would be a sort of treason against general opinion, if I were to express regret that that arrangement is not revocable, yet it is probable that if it were revocable, it would no longer be suffered to exist.

172.—Beneficial as the system proposed would appear to be for those whose interests are chiefly concerned, it is not improbable, that it might be shunned, or accepted with reluctance in the beginning by the Zemeendars, in consequence of distrust.

173.—The advantages however, which would soon accrue to some, would render the system popular amongst all, and there cannot be a doubt of its ultimate and entire success, with respect to the inclinations of the people.

174.—We ought not to be discouraged by any appearance of reluctance that might be discovered. This reluctance would be the natural consequence of mistrust, arising out of past insecurity. As soon as the people taste the enjoyment of reaping exclusively the

 fruit

fruit of their own labour, and feel by experience the advantage of security of property, there would no longer be any doubt or hesitation.

175.—It would be proper to protect the rights of the cultivators, and to provide, that any reluctance on their part to enter into engagements for long settlements be not allowed to operate, so as to exclude the future assumption of rights, which from distrust alone, they might not at first know how to estimate.

176.—It might be necessary in some villages to have recourse for a time to the farming system; or to the mode of collecting the Rents of Government, according to the quantity and quality of the produce; but in either case, it should be at the option of the possessors of the Land to be admitted whenever they chuse, to the benefit of long settlements on their own responsibility.

177.—It appears to me to be highly desirable to exclude as much as possible, farmers who have not any permanent interest in the Land. If it be at any time necessary to have recourse to farmers, the cultivators of other villages, those who actually have a landed property, are preferable to the Mootusudees and others of that class, who haunt the Offices of Collectors, for the purpose of obtaining farms and reaping a profit, which otherwise would go, either to the Government, or to the cultivator.

178.—Next to enriching the cultivators of the particular village, and teaching them to know the value of reaping the fruits of their own labour, it would be desirable to enrich the cultivators of other villages, and thus benefit members of the agricultural class, exhibiting thereby an encouraging example to others of the same class; instead of throwing away those advantages on speculators, whose sole object is instant profit, who neither increase the produce of the Land by their own labour, nor afford any encouragement to the labour of others.

179.

179.—It is a plausible and favorite argument, that the introduction of men of property into the management of Land would tend much to increase the Revenue of Government, and enrich the country by inducing them to lay out their wealth in the improvement of the cultivation.

180.—Those however who generally apply for farms, are not men of property, but needy adventurers, who borrow to pay the Revenue of Government, have nothing to lay out in the improvement of cultivation and look to a profit from squeezing as much as possible out of the cultivators.

181.—But supposing the farmers to be men of property, it is observable that men of property do not in general lay out money in the improvement of their Lands, but rather endeavour to extract the utmost possible present Rent from it, by pushing their demands to extremity.

182.—And it must be remembered, that if the management of the Land do not rest with the cultivators, their situation will remain stationary, and will not be improved, whatever emolument the man of wealth may derive from his farm. Every arrangement which would prevent the cultivator from reaping the fruits of his own industry, must interfere with the rise and prosperity of the cultivating class of the community.

183.—I will now recapitulate the principles of the settlements proposed.

1.—The Government as proprietor of the Land, entitled to the Rent.

2.—The village Land-holder entitled to the possession and use of the Land as perpetual tenant of the Government. N. B.—The preceding articles admit the proprietary right of the Government, and the possessory right of the village Land-holder; this division of the right of property seeming to be the most congenial to the actual practice of the country.

3.

3.—The share of the produce due to Government as Rent to be commuted for a fixed annual sum to be paid by the Land-holders.

4.—This sum to be fixed by periodical settlements. The leases to last for any number of years not less than ten and not exceeding one hundred.

5.—The demand of Government susceptible of increase on new settlements, but with a systematic indulgence towards the Land-holders. Rules to ensure this indulgence, and to counteract the laudable zeal of public Officers for an increase of Revenue might be enacted.

6.—The settlements to be concluded with the villagers, that is with the head-men on the part of the Land-holders of the villages, until such a change be effected, as may make it expedient to give separate leases to individual Land-holders.

7.—The amount engaged for by the villagers to be collected by the head men (Mokuddums) by a fair and proportionable assessment on the Lands, as agreed on in the general assembly of the Land-holders of the villages.

8.—All third parties, farmers or others to be studiously excluded, and no intervention to be admitted, where it can be avoided, between the Government and the hereditary possessors of the Land.

184.—As far as the prosperity of India can be promoted, by calling forth the energies of the body of the people, it appears to me, that the system herein proposed is calculated to produce that effect in a greater degree than any other that can be suggested.

185.—But it is not to be expected that the effects, which may ultimately be produced, will shew themselves, instantaneously. Time

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may be necessary to establish that confidence and security, which are indispensible to form the basis of the benefits anticipated.

186.—Perhaps indeed the resources of this country will never be fully brought forth, until Europeans be allowed to become Land-holders, and until the free admission of British subjects be permitted. Then and not till then will India flourish in full vigor. Then will agriculture, commerce and manufactures advance by rapid strides. Then will the example of European enterprize excite emulation and imitation among the Natives. Then will the Revenues of this country be so vast as to afford irresistible strength to the local Government, and to aid effectually in support of the British Empire in Europe. Then shall we possess a British population, whose interests are identified with those of the Government, whose residence in the provinces will add security to our Empire in India, and which without the power of being dangerous to the Government, will have the means of being useful in its support.

187.—All the arguments used against what is termed colonization seem to be founded on an acknowledgment of the extreme delicacy and precarious of our present tenure in this country, and to allow those arguments to have weight appears to be the same as confirming in perpetuity the weakness and precariousness on which they are founded.

188.—I will not presume to discuss this point at length. The opinions of high authorities is against the free admission of Europeans or British subjects, so also I believe, is the general opinion of the British public. Because the colonies of America revolted, it is therefore imagined, that the exclusion of British subjects from India will give stability to our Asiatic Empire, without any advertance to the difference of the cases; without any thought of the danger, which the exclusion of British subjects must induce. But on whatever argument

 founded

founded, we may hereafter rue the opinion, which has been practically acted on.

189.—I am aware, that nothing that I can say on this subject would have any weight. I am also sensible that in expressing such opinions, I may be deemed guilty of presumption, but on an occasion like the present, I conceive myself bound to recommend whatever promises to be beneficial, with reference to the subject of this report; and therefore I recommend the free admission of British subjects to settle in India, under Laws and Regulations suited to the state of the country, and unlimited liberty to acquire property by lawful means, as the surest [illegible] strength of [illegible]

I have &c.

CHARLES METCALFE.

Resident.

Dihlee, 4th [illegible]